TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 419

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

JONES & LAUGHLIN STEEL CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 30, 1936
CERTIORARI GRANTED NOVEMBER 30, 1936

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JOINT STIPULATION OF COUNSEL AS TO PRINTING OF RECORD.

FILED APRIL 30, 1936.

IN THE

United States Circuit Court of Appeals

FOR THE FIFTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, Petitioner, vs. JONES & LAUGHLIN STEEL CORPORATION, Respondent,	STIPULATION No. 8088

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that the exhibits in the above entitled proceeding having heretofore been filed with the Clerk of the Court herein need not be printed as a part of the printed record on appeal herein but either party hereto may refer to such exhibits either in its brief or in oral argument.

(Signed) Robert B. Watts
Robert B. Watts, Associate General Counsel, National Labor Relations Board

(Signed) John E. Laughlin, Jr.
Attorney for Respondents

Dated: April 25, 1936.

IN THE

United States Circuit Court of Appeals

FOR THE FIFTH CIRCUIT

NOVEMBER TERM, 1935.

No. 8088

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

JONES & LAUGHLIN STEEL CORPORATION,
Respondent.

CERTIFICATE OF NATIONAL LABOR RELATIONS BOARD.

The National Labor Relations Board, by its Secretary duly authorised by Rule and Regulation of the National Labor Relations Board dated the 16th day of October, 1935, a copy of which Rule and Regulation is attached hereto and made a part hereof, does hereby certify that, except as noted below, the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled "In the Matter of Jones & Laughlin Steel Corporation, and Amalgamated Association of Iron, Steel and Tin Workers of North America, Beaver Valley Lodge No. 200," the same being Case No. C-57 before said Board, said transcript including the pleadings, testimony

and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of charge made by Amalgamated Association of Iron, Steel and Tin Workers of North America, Beaver Valley Lodge No. 200, filed with the National Labor Relations Board on January 23, 1936.

(2) Copy of Complaint and Notice of Hearing Issued by the National Labor Relations Board on January 23, 1936.

(3) Copy of order of the National Labor Relations Board, dated February 27, 1936 transferring proceeding to National Labor Relations Board.

(4) Copy of Special Appearance and Answer of Jones & Laughlin Steel Corporatian, verified February 26, 1936. (This pleading is contained in Board's Exhibit No. 1, included under item 8 hereof.)

(5) Copy of Notice of Hearing issued by the National Labor Relations Board on March 11, 1936.

(6) Copy of Order of the National Labor Relations Board, dated March 11, 1936, designating J. Warren Madden as Trial Examiner.

(7) Copy of Notice of Hearing issued by the National Labor Relations Board on March 27, 1936.

(8) Stenographic reports of hearings before the National Labor Relations Board on March 2nd and 3rd and on April 2nd, 3rd, 6th, 7th and

8th, 1936, and before J. Warren Madden, as Trial Examiner of the National Labor Relations Board, on March 14, 1936, including all exhibits, or copies thereof, introduced in evidence.

(9) Copy of decision, findings of fact and conclusions of law, and order of the National Labor Relations Board, dated April 9th, 1936.

IN TESTIMONY WHEREOF, the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the Seal of the National Labor Relations Board, in the City of Washington, District of Columbia, this 10th day of April, 1936.

BENEDICT WOLF,
Benedict Wolf, Secretary,
National Labor Relations Board

NATIONAL LABOR RELATIONS BOARD
Washington, D. C.

Rule and Regulation authorizing the Secretary of the Board to certify copies of papers and documents

By virtue of the authority vested in it by the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board hereby authorizes the Secretary to certify copies of all papers and documents which are a part of any of the files or records of the Board as may be necessary or desirable from time to time. This Rule and Regulation shall be effective upon its publication in the following manner, namely by the

signing of the original by the members of the Board and the filing of said original with the Secretary of the Board, at whose office the original shall be available for public inspection and where copies of it shall be available to the public.

Signed at Washington, D. C. this 16th day of October, 1935.

(Signed) J. Warren Madden, Chairman
(Signed) Edwin S. Smith, Member
(Signed) Jno. M. Carmody, Member

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Sixth Region

In the Matter of JONES & LAUGHLIN STEEL CORPORATION and BEAVER VALLEY LODGE No. 200 Affiliated with the Amalgamated Association of Iron, Steel and Tin Workers of North America	National Labor Relations Board CASE NO. C-57 Board EXHIBIT NO. 1 IN THE MATTER OF Jones & Laughlin Steel Corp. DATE 3/2/36 WITNESS SMITH & HULSE, Official Reporters By Fursdon

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Jones & Laughlin Steel Corporation, Aliquippa Works, Aliquippa, Pa., has engaged in and is engaging in unfair

labor practices within the meaning of Section 8, subsections (1) and (3) of said Act, in that

The Jones & Laughlin Steel Corporation, Aliquippa Works, of Aliquippa, Pennsylvania, have unjustifiably discharged and demote certain of their employees, all of whom have been and are members of the complainant, Beaver Valley Lodge No. 200, of Aliquippa, Pennsylvania, which is affiliated with ahe Amalgamated Association of Iron, Steel and Tin Workers of North America, and with the American Federation of Labor. That all of the members of the Beaver Valley Lodge No. 200 were and are employees of the respondent.

That these discharges and demotion of the employees of the respondent, who are members of the Union, were unjustified, were discriminatory, and without cause or reason. That the respondent discharged and demoted these employees because of their membership and activity in the Beaver Valley Lodge No. 200.

That the respondent has discharged and demoted these employees so as to intimidate, coerce, and otherwise influence or force other employees of the company from joining the Union, or, if already members, from taking an active part in the Union, and with the intent and purpose of, first interfering with the self-organization of the employees of Jones & Laughlin, and, second, with the intent of frustrating or otherwise breaking up the activities of the Beaver Valley Lodge No. 200, and with a view of eventually dissolving the Union.

That a summary of these discharges and demotion of said employees is more fully set forth in Exhibit "A", attached hereto and made part hereof.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Albert Atattalo President
Beaver Valley Lodge No. 200
130 Grandview Avenue, Aliquippa, Pa.

Subscribed and sworn to before me this 23rd day of January, 1936

Robert H. Kleeb
Regional Attorney

SUMMARY OF DISCHARGES AND DEMOTION

1. DOMENIC BRANDY. Check No. 10110, jigman on coal washer, coke department, employed by the company since 1910, and employed for eight (8) years on the coal washer.

He was suspended from work for two (2) weeks, beginning August 5th, 1935. He had never been suspended from work before. He is a trustee of the Union and prominently active. On November 28th, 1935, he was discharged, for the reasons set forth in the body of the "CHARGE."

2. ANGELO VOLPE. Check No. 11757, craneman, welded tube department. He has been in the employ of the company since 1914, and employed as a crane-

man for the past five (5) years. He was discharged on July 31st, 1935, for the reasons set forth in the body of the "CHARGE."

3. HARRY PHILLIPS. Was formerly president of the Beaver Valley Lodge No. 200, and has been an active member of the Union. He was discharged on July 20th, 1935, for the reasons set forth in the body of the "CHARGE."

4. MARTIN DUNN. Check No. 135, craneman, Sinter Plant, employed by the company since 1920, and employed as a craneman for over a year. He was discharged on July 9th, 1935, for the reasons set forth in the body of the "CHARGE."

5. WILLIAM J. COLLINS. Check No. 18268, employed as a carpenter in the service department since 1926. He had never been discharged, quit, layed-off, or transferred. He was a very active member of the complainant lodge ever since the date of its organization in October 1934. He was discharged on December 3rd, 1935, for the reasons set forth in the body of the "CHARGE."

6. GEORGE MARROLL. He was a fitter at the Aliquippa plant, and has been very active as a member of the complainant Union. He was discharged on December 5th, 1935, for the reasons set forth in the body of the "CHARGE."

7. ROYAL BOYER. Check No. 9619, nail mill, wire department. He has been working since 1924. He was suspended on October 29th, 1935, for a period of two (2) weeks. Prior thereto, and afterwards, when he returned to work, up to and until December 9th, he

was subjected to discrimination and unfair tactics by the inspector and foreman, because of his Union activities. On December 9th, 1935, he was discharged for the reasons set forth in the body of the "CHARGE."

8. GULIO YACOBUCCI. He has been working for respondent since 1923. He was discharged on December 4th, 1935, for the reasons set forth in the body of the "CHARGE."

9. MARTIN GERSTNER. He was employed by the respondent for the past six (6) years. He was a motor inspector. He is Financial Secretary of the Union, and very active in its behalf. He was discharged on December 16th, 1935, for the reasons set forth in the body of the "CHARGE."

10. ANGELO RAZZANO. Check No. 22611, tractor operator in the seamless tube department. He has been in the employ of the company off and on since 1924 and has been employed steadily for the past seven years. He is a very active member of the Union. He was discharged on January 13th, 1936, for the reasons set forth in the body of the "CHARGE."

11. ELY BOZICH. Check No. 17622. He has worked for the company off and on for the past fifteen years and has been employed as a laborer in the north mill boiler house for the past eight years. He is an active member in the Union. He was discharged on January 13th, 1936, for the reasons set forth in the body of the "CHARGE."

12. RONALD B. COX. Check No. 21718. He has worked for the company for seven years as an electric hoisting craneman in the seamless tube department. He was discharged on January 6th, 1936, for the reasons set forth in the body of the "CHARGE."

13. MARCO LUKICH. CHECK No. 15078, millwright. He has been in the employ of the company since 1910, and employed as a millwright for the past ten (10) years.

On June 18th, 1935, he was demoted from a millwright to a crane hooker. This demotion resulted in a decrease from SEVENTY-ONE AND ONE-HALF (71½c) CENTS an hour, to FIFTY-TWO (52c) CENTS an hour.

On August 5th, 1935, he was demoted from a crane hooker to a laborer. This demotion resulted in a decrease from FIFTY-TWO (52c) CENTS AN hour, to FORTY-SEVEN (47c) CENTS an hour in pay.

On August 6th, 1935, he was sent home, and told not to return to work until called for. On August 12th, 1935, he was put back to work as a laborer.

He has been active in the Union, and he was demoted, as aforesaid, for the reasons set forth in the body of the "CHARGE."

That all of these discharges and demotion occurred at the Aliquippa Works of the Jones & Laughlin Steel Corporation.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Sixth Region

In the Matter of JONES & LAUGHLIN STEEL CORPORATION and AMALGAMATED ASSOCIATION OF IRON, STEEL AND TIN WORKERS OF NORTH AMERICA, BEAVER VALLEY LODGE NO. 200	CASE NO. VI C-6

It having been charged by the Amalgamated Association of Iron, Steel and Tin Workers of North America, Beaver Valley Lodge No. 200, that the Jones & Laughlin Steel Corporation, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by its Regional Director for the Sixth Region, as agent of the National Labor Relations Board designated by National Labor Relations Board Rules and Regulations, Series 1, Article IV, Section 1, hereby alleges the following:

1. The respondent is and has been since December, 1922, a corporation organized and existing by virtue of the laws of the Commonwealth of Pennsylvania, having its principal office and place of business in the City of Pittsburgh, County of Allegheny, and Commonwealth of Pennsylvania, and is now and has continu-

ously been engaged at a place of business in the Borough of Aliquippa, County of Beaver, Commonwealth of Pennsylvania, (hereinafter called the Aliquippa Works) in the production, sale and distribution of iron and steel products.

2. The respondent in the course and conduct of its business causes and has continuously caused a preponderant portion of the raw materials used in the production of its iron and steel products to be purchased and transported in interstate commerce from and through states of the United States other than the Commonwealth of Pennsylvania to the plant of the respondent in Aliquippa in the Commonwealth of Pennsylvania, and causes and has continuously caused a preponderant portion of the iron and steel products produced by it to be sold and transported in interstate commerce from the Aliquippa Works in the Commonwealth of Pennsylvania to, into and through states of the United States other than the Commonwealth of Pennsylvania, all of the aforesaid constituting a continuous flow of commerce among the several states.

3. The respondent by its officers and agents, while engaged at the Aliquippa Works as described above, did discharge

Domenic Brandy on the 28th day of November, 1935.
Angelo Volpe on the 31st day of July, 1935.
Harry Phillips on the 20th day of July, 1935.
Martin Dunn on the 9th day of July, 1935.
Wm. J. Collins on the 3rd day of December, 1935.
George Marroll on the 5th day of December, 1935.
Royal Boyer on the 9th day of December, 1935.
Gulio Yacobucci on the 4th day of December, 1935.
Martin Gerstner on the 16th day of December, 1935.
Angelo Razzano on the 13th day of January, 1936.
Eli Bozich on the 13th day of January, 1936.
Ronald B. Cox on the 6th day of January, 1936.

hereinafter referred to collectively as the above-named individuals, employed by the respondent at the Aliquippa Works, and has at all times since said dates refused to reinstate said above-named individuals and each of them.

4. The respondent by its officers and agents, while engaged at the Aliquippa Works as described above did demote

Marco Lukich on the 5th day of August, 1935

hereinafter referred to collectively with the above-named individuals, employed by the respondent at the Aliquippa Works, and has at all times since said date refused to reinstate to his former position the above-named individual.

5. The respondent discharged and refuses to reinstate the discharged individuals named in paragraph 3 and to reinstate to his former position the demoted individual named in paragraph 4 for the reason that said above-named individuals joined and assisted a labor organization known as the Amalgamated Association of Iron, Steel and Tin Workers of North America, Beaver Valley Lodge No. 200, and engaged in concerted activities with other employees at the Aliquippa Works for the purpose of collective bargaining and other mutual aid and protection.

6. By its discharge and demotion of the said above-named individuals and each of them, and by its refusal to reinstate said above-named individuals and each of them, as above set forth, the respondent did interfere with, restrain, and coerce and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of said Act,

and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subdivision (1) of said Act.

7. By its discharge and demotion of said above-named individuals and each of them, and by its refusal to reinstate said above-named individuals and each of them, as above set forth, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said above-named individuals and each of them and did discourage, and is discouraging membership in the Amalgamated Association of Iron, Steel and Tin Workers of North America, Beaver Valley Lodge No. 200, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of said Act.

8. The aforesaid unfair labor practices of the respondent occur in commerce among the several states, and on the basis of experience in the aforesaid plant and others in the same and other industries, burden and obstruct such commerce and the free flow thereof, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free-flow thereof.

9. The aforesaid acts of the respondent, as set forth in paragraphs 3 to 7 inclusive, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of said Act.

WHEREFORE, the National Labor Relations Board on the 23rd of January, 1936, issues its complaint against the Jones & Laughlin Steel Corporation, respondent herein.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on the 5th day of February, 1936, at ten o'clock in the forenoon, in Federal Court Room No. 4, New Post Office Building, Seventh Avenue and Grant Street, Pittsburgh, Pennsylvania, a hearing will be conducted before a trial examiner to be designated by the National Labor Relations Board in accordance with said Rules and Regulations, Series 1, Article IV, and Article II, Section 22, on the allegations set forth in the complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Sixth Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the complaint attached hereto, on or before the 30th day of January, 1936.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 1, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

IN WITNESS WHEREOF the National Labor Relations Board has caused this, its complaint and notice of hearing to be signed by the Regional Director for the Sixth Region on the 23rd day of January, 1936.

(s) Clinton S. Golden (M. G. S.)
Regional Director, Sixth Region.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 27th day of February, 1936

PRESENT:

John M. Carmody
Edwin S. Smith

In the Matter of JONES & LAUGHLIN STEEL CORPORATION and AMALGAMATED ASSOCIATION OF IRON, STEEL AND TIN WORKERS OF NORTH AMERICA, BEAVER VALLEY LODGE NO. 200	CASE NO. VI C-6

ORDER TRANSFERRING PROCEEDING TO NATIONAL LABOR RELATIONS BOARD.

A charge having been duly filed in this case with the Regional Office for the 6th Region, and the Board deeming it necessary in order to effectuate the purposes of the National Labor Relations Act that the above entitled matter be transferred to and continued before it,

IT IS HEREBY ORDERED, in accordance with Section 35 of Article II of the National Labor Relations Board's Rules and Regulations - Series I, that this pro-

ceeding be transferred to and continued before the Board.

By direction of the Board:

Benedict Wolf,
Secretary

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of JONES & LAUGHLIN STEEL CORPORATION and AMALGAMATED ASSOCIATION OF IRON, STEEL AND TIN WORKERS OF NORTH AMERICA, BEAVER VALLEY LODGE NO. 200	CASE NO. C-57

PLEASE TAKE NOTICE that a further hearing will be held before J. Warren Madden, Acting as Trial Examiner for the National Labor Relations Board, on Saturday, March 14, 1936, at 10 a. m., Room 1030 Post Office Building, Pittsburgh, Penna., for the purpose of taking testimony.

You may appear and be heard if you so desire.

Dated, Washington, D. C., March 11, 1936.

Benedict Wolf,
Secretary

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 11th day of March, 1936.

PRESENT:

J. Warren Madden, Chairman

John M. Carmody

In the Matter of	
JONES & LAUGHLIN STEEL CORPORATION	
and	CASE NO. C-57
AMALGAMATED ASSOCIATION OF IRON, STEEL AND TIN WORKERS OF NORTH AMERICA, BEAVER VALLEY LODGE NO. 200	

ORDER DESIGNATING TRIAL EXAMINER

A charge having been filed in this matter, and it having appeared to the National Labor Relations Board that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

IT IS HEREBY ORDERED that J. Warren Madden act as Trial Examiner in the above-case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1 of the National Labor Relations Board.

By direction of the Board:

Benedict Wolf,
Secretary

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

In the Matter of JONES & LAUGHLIN STEEL CORPORATION and AMALGAMATED ASSOCIATION OF IRON, STEEL AND TIN WORKERS OF NORTH AMERICA, BEAVER VALLEY LODGE NO. 200	CASE NO. C-57

PLEASE TAKE NOTICE that a further hearing will be conducted before the National Labor Relations Board on the 2d day of April, 1936, at 10 o'clock in the forenoon, Room 406, Denrike Bldg., 1010 Vermont Ave., N. W., Washington, D. C.

You may appear and be heard if you so desire.

By direction of the Board:

Dated, Washington, D. C., March 27, 1936.

Benedict Wolf,
Secretary

NATIONAL LABOR RELATIONS BOARD

Washington, D. C.

J. Warren Madden
Chairman

John M. Carmody
Edwin S. Smith

Item 8 (Stenographic Reports and Exhibits) attached in part. Others under separate cover.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of JONES & LAUGHLIN STEEL CORPORATION and AMALGAMATED ASSOCIATION OF IRON, STEEL AND TIN WORKERS OF NORTH AMERICA, BEAVER VALLEY LODGE NO. 200	CASE NO. C-57

DECISION

STATEMENT OF THE CASE

On January 23, 1936, Beaver Valley Lodge No. 200, of the Amalgamated Association of Iron, Steel and Tin Workers of North America, hereinafter referred to as the Union, filed a charge with the Regional Director for

the Sixth Region against the Jones & Laughlin Steel Corporation, Pittsburgh, Pennsylvania, hereinafter referred to as the respondent, charging the respondent with violations of Section 8, subdivisions (1) and (3) of the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the Act. Thereupon, a complaint and notice of hearing signed by Clinton S. Golden, Regional Director for the Sixth Region, were issued and duly served upon the respondent. The complaint charged the respondent with violations of Section 8, subdivisions (1) and (3) because of the discharge of and refusal to reinstate 12* employees and the demotion of one employee, all at its Aliquippa Works, for the reason that they joined and assisted the Union and engaged in concerted activities with other employees at the Aliquippa Works for the purpose of collective bargaining and other mutual aid and protection.

The respondent filed a special appearance and answer. For answer it admitted the discharges and demotion, but averred that in all cases they were made because of inefficiency and violation of the respondent's rules. The respondent further claimed that the Act violates the Fifth and Seventh Amendments to the Constitution of the United States, that it confers judicial power on the Board in contravention of that Constitution, and that the activities of respondent are intrastate and not subject to regulation by Congress or the Board.

By order of the Board dated February 27, 1936, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 35 of Na-

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*At the hearing the complaint with respect to one of these employees, W. J. Collins was withdrawn at his request. He stated in a letter addressed to the Board that he feared the use of his name would do him harm.

tional Labor Relations Board Rules and Regulations - Series 1.

A hearing was held on March 2 and 3, 1936 at Pittsburgh, Pennsylvania, before the Board, at which hearing full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issue, was afforded to all parties. The Board and the respondent both presented evidence as to the nature of the respondent's business operations. The respondent then moved to dismiss on the ground that on the evidence it conclusively appeared that neither the respondent's operations nor its labor relations were in or affected interstate commerce. The motion to dismiss was denied. Thereupon, the respondent's counsel took no further part in the hearing and withdrew. A further hearing was held in Washington, D. C., April 2 to April 8, 1936.

Upon the evidence adduced at the hearing and from the entire record now before it, including the transcript of the hearing and exhibits introduced, the Board makes the following:

FINDINGS OF FACT

I.

The Respondent

The Jones & Laughlin Steel Corporation is a Pennsylvania corporation which, together with its subsidiaries —19 in number—manufactures and distributes a widely diversified line of steel and pig-iron. The respondent

is the fourth largest producer of steel in the United States. It has an annual capacity of 3,189,700 N.T. coke; 3,000,000 G.T. pig-iron; 3,660,000 G.T. steel ingots; and 2,837,600 G.T. of finished steel hot rolled products. In the year 1934 the respondent shipped 880,031 N.T. of steel products, valued (together with certain other gross receipts) at $47,957,338.36. It has two plants, one in Pittsburgh and one nearby in Aliquippa. The assets of it and its consolidated companies were valued, as of December 31, 1934, at $181,532,641.36. It employs over 22,000 persons, about 10,000 of them at its Aliquippa plant.

In a registration statement filed with the Securities and Exchange Commission by the respondent, it characterized itself as "completely integrated, owning and operating ore, coal, and limestone properties, lake and river transportation facilities and terminal railroads located at its manufacturing plants, at Pittsburgh and Aliquippa, Pennsylvania". The respondent owns or controls mines in Michigan and Minnesota estimated to contain approximately 60,000,000 tons of ore. It operates four ore steamships on the Great Lakes, used in transportation of ore to its factories. It owns coal mines in Pennsylvania estimated to contain 600,000,000 tons of recoverable coal. Much of this coal is located adjacent to the Monongahela River. The respondent owns and operates ten tow boats and 165 steel barges used in carrying coal from the mines to its factories. The respondent owns limestone properties in various places in Pennsylvania and West Virginia. Iron ore, coal, and limestone are the three important materials used in producing pig-iron and steel.

The respondent owns and operates the Monongahela Connecting Railroad—40.99 miles of standard guage track—which connects the plants of the Pittsburgh works

and forms an interconnection with the Pennsylvania, New York Central and Baltimore and Ohio railroad systems at Pittsburgh, Pennsylvania. This line has 30 locomotives and 713 freight cars. It owns the Aliquippa and Southern Railroad Company—43.20 miles of standard guage track—which connects the Aliquippa Works with the Pittsburgh and Lake Erie (part of the New York Central System). The Aliquippa line has 19 locomotives and 614 freight cars. It reports to the Interstate Commerce Commission as a common carrier. Thus, by means of its own railroads, the respondent ships its raw materials into its works and ships out the finished and semi-finished products. The cars of the Aliquippa line, for example, are carried to the point of loading or unloading and there are handled by the respondent's employees with the help of the respondent's cranes and loading equipment. A system of tracks connects all parts of the works, buildings, and yards with each other and with the rails of the Aliquippa line and from that to the New York Central line. The respondent is the largest shipper over the Pittsburgh and Lake Erie. More than 97% of the shipments originating at Aliquippa are made by the respondent. If operations at the Aliquippa Works were interrupted by labor difficulties or otherwise the business of the Pittsburgh & Lake Erie—an interstate carrier—would be seriously crippled.

The respondent has far-flung properties and many employees engaged in the distribution of its products. Much of the product is shipped to its warehouses in Chicago, Detroit, Cincinnati, and Memphis—to the last two places by means of its own barges and transporta-

tion equipment. In Long Island City, New York and in New Orleans it operates structural steel fabricating shops in connection with the warehousing of semi-finished materials sent from its Works. Through one of its wholly-owned subsidiaries it owns, leases and operates stores, warehouses, and yards for the distribution of equipment and supplies for drilling and operating oil and gas mills and for pipe lines, refineries, and pumping stations. It has sales offices in 20 cities in the United States and a wholly-owned subsidiary devoted exclusively to distributing its product in Canada. It advertises in newspapers and magazines. Approximately 75 per cent of its product is shipped out of Pennsylvania.*

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*The following are the figures for railroad shipments into and out of the Aliquippa Works in July, 1935—a characteristic month.

Inbound

	Carloads	Percent
Interstate	3,627	81.1
Intrastate	846	18.9
	L. C. L.	Percent
Interstate	114	60.4
Intrastate	75	39.6

Outbound

	Carloads	Percent
Interstate	1,341	67.3
Intrastate	651	32.7
	L. C. L.	Percent
Interstate	222	72.3
Intrastate	85	27.7

The ramilcations of the Jones & Laughlin Steel Corporation are thus as broadly extended as the nation itself. It is impossible to isolate the operations of the Works in Pittsburgh and Aliquippa or to consider them as detached, separate—"local"—phenomena. These Works might be likened to a heart of a self-contained, highly integrated body. They draw in the raw materials from Michigan, Minnesota, West Virginia, Pennsylvania in part through arteries and by means controlled by the respondent; they transform the materials and then pump them out to all parts of the nation through the vast mechanism which the respondent has elaborated.

In these and many other respects the respondent shows the characteristics of the steel industry as a whole. This industry had, as of 1934, an investment of $4,705,976,350. To support its activity 33,000 men mine ore, 44,000 men mine coal, 4,000 men quarry limestone, 16,000 men manufacture coke, 343,000 men manufacture steel, and 83,000 men transport its product. The conception of the industry as a conduit through which materials pass in a continuous stream from mine to consumer, undergoing transformations en route, at the mine, at the mill, at the fabricating plant, until they are delivered to the consumer becomes, for technical and economic reasons, more and more exact.

The steel industry involves enormous movements of materials back and forth across the length and breadth of the nation. Of approximately 25,000,000 tons of ore mined in the United States in 1934, 15,000,000 were

mined in Minnesota, 5,000,000 in Michigan, and 2,000,000 in Alabama. These states, on the other hand, accounted for less than 2,000,000 of the 15,686,442 tons of pig-iron manufactured in that year. In Pennsylvania, Ohio, Illinois and Indiana, producing 11,285,014 tons of pig iron, only 524,657 tons of ore were mined. Additional iron ore is imported from Cuba and Chile. States producing 9,429,305 tons of pig iron, 55.7% of the total, import all the coal used by them in the manufacture of coke. Of the approximately 114,000 tons of manganese used in the industry, 95,000 tons are imported from Brazil, India, and Russia; the remainder is mined in states of the United States producing little or no pig iron or steel. A great steel company will, for example, dig out and pick up its materials in one state, carry them to its plant in another, there melt them down and fashion them into shapes, transport them out of its plant, itself initiating the rail shipment—sometimes performing all of a water shipment—, further fabricate them at the conclusion of this shipment in still another state, and then deliver them to the customer. This vertical integration of the entire process through the medium of a single company is typical of the few giant corporations which control the bulk of the steel production in this country. Two corporations, the United States Steel Corporation and the Bethlehem Steel Corporation, have over 50% of the steel capacity of the country. Add to this eight more companies, among them the respondent, and 91% of the nation's capacity is accounted for. This great size is in part an outgrowth of technical forces. It has been estimated that the investment required for the most efficient blast furnace operation is in the neighborhood of $100,000,000. Vertical integration, a further source of economy, may increase capital requirements. The great capacities thus built up, whatever their causes, require large markets and have molded

the steel industry as a whole and in its most important units into a nationwide system. The device of the "transit rate" for steel products—"transit rate" on numerous products are permitted by the Interstate Commerce Commission—which is used by the respondent illustrates in particular that processing and fabrication are simply transformations of materials en route in the stream of commerce. Under the transit rate a steel fabricator who buys steel forms from a steel producer at point A, performs on them certain limited work at point B and then ships the product to point C, receives from the railroads the privilege of the through rate from A to C, (point B being considered only as a temporary stopping place where service is performed in transit). The respondent has availed itself of the transit rate to fabricate steel thus in transit for delivery in states other than Pennsylvania. The great importance of transportation to the steel industry and of the steel industry to the railroads is shown by the fact that 12% of the railroads' freight is attributable to the activity of the steel industry.

An increasingly large part of this activity does not consist in processing goods in the expectation of future sales but is a direct response to the customer's order. The steel industry is becoming predominantly a special order business. It has been estimated that the industry must be prepared to produce no less than 100,000 variations of the approximately 500 different kinds of steel products. Though no one plant will meet all these needs, it will seek—particularly where it is large—to fill all the demands possible for a plant of its type; it will be ready to provide variations on its staple products. But to carry sufficient inventories of such varieties becomes an increasing burden. Thus, the consumer's order directly initiates particular plant activity and conversely, a breakdown in this activity makes

likely stoppage of shipment. This is true of the Aliquippa Works, where most of the product is manufactured on special order.

The significance of the special order system, and the ramifying effect of stoppage, are made clearer by an inquiry into the uses of basic steel products. Steel, of course, is used to a great extent in operations involving further manufacture and transportation. Recent estimates show that about 20% of all steel products are used by the automobile industry. The railroads take nearly 12% of the steel output. Other important uses are food packing—9%; agricultural implements—5%; building and fabrication of materials for building —12%. Furthermore, a large pig-iron and ingot plant such as Aliquippa will produce semi-finished products to the order of special steel fabricators. About 30% of Aliquippa's sales are of semi-finished materials. A stoppage of steel production hinders the progress of and normal operations in these many industries which depend on steel.

The price system of the steel industry emphasizes the close relation between shipment and manufacture of the product. We refer to the famous basing point system of quoting prices. "The essence of the multiple basing point system in the steel industry," says the Federal Trade Commission* of the price system now in use, "is to be found in its use of a device of calculation whereby buyers of a commodity located at any given point are charged by the industry a definite uniform price for delivery at that point, regardless of the point of shipment . . . ." This system enlarges the market in which many companies can compete, since it neutralizes transportation differentials based on differing distances between the plants of competitors and

*Report of Federal Trade Commission to the President with Respect to the Basing Point System, p. 2., November 1934.

a given customer. It no doubt assists many of the companies in maintaining their great size, their broad structures of distribution, and their high degree of integration. It reveals fully the fact that transportation of the product is not only the final stage of that integration, but one which conditions the extent and nature of the earlier stages. The mining of materials, their transportation to and collection at a point, their transformation there into pig-iron, into steel shapes in all stages of finish, their reshipment for further fabrication, for use in railways, automobiles, buildings: all this is one giant, indivisible economic process: it is commerce among the states.

We conclude that the operations of the respondent constitute a continuous flow of trade, traffic, and commerce among the several states.

II

Organization of the Union in Aliquippa

Aliquippa is a city of about 30,000 inhabitants, 10,000 of whom are employed by the respondent. Thus, one in every three is dependent upon the respondent for employment. Assuming that an average proportion of persons have families this means that nearly every one looks to the respondent for his livelihood. The respondent owns in Aliquippa a street railway system, a motor coach system, and the water supply system. It owns 128 acres of improved and unimproved property, approximately 1,174 acres of farm land, and 674 dwellings occupied by employees all located in and about Aliquippa. The respondent has its own police force—the "J & L Police."

On August 4, 1934, the Amalgamated Association of Iron, Steel and Tin Workers chartered the Beaver Valley Lodge, a labor organization, with the following

officers and charter members: Harry V. Phillips, president; Angelo Volpe, vice president; B. S. McDonald, recording secretary; Martin Gerstner, financial secretary; James A. Dunn, Treasurer; Andrew Smith, guide; Allen James, inside guard; E. L. Ponder, outside guard.

The union sought, thereafter, to organize the men in the Aliquippa Works. Their efforts were countered by systematic terror. Officers of the union and organizers who came into Aliquippa were followed about by the private police of the respondent—the "J & L Police." The more important union officers were honored by the respondent with permanent shadows and were followed even into the neighboring town of Ambridge where they carried on their activities because of the difficult situation in Aliquippa. The house of Gerstner, the financial secretary, at which an organization meeting had been held, was surrounded day and night by the J & L Police, and the employment agent of the respondent sat near Gerstner's doorway noting down the names of those who entered the house. Persons coming out of the house were questioned. Some were mysteriously beaten and hit on the head while walking in the streets. A year earlier in August, 1933, a union organizer, John S. Meyer, had come to Aliquippa and distributed union pamphlets. As he went along the street he was set upon by two persons who beat him severely. He was then taken before a Justice of Police, fined $5, and refused a transcript of record for purposes of appeal. Until he left town he was trailed by automobiles owned by the respondent.

The officers and organizers found it impossible, in August and September of 1934, to secure a public place in Aliquippa for a union meeting. They were refused the Italian Hall, the Slovak Hall, the Serbian Hall; they were refused the use of open lots. They held their meetings in an open lot in Ambridge, a town across

the river from Aliquippa. In October, union officers complained of the Aliquippa situation to the Governor of the State. State police were sent to Aliquippa. On October 14, 1934 the first open meeting of the union was held in Aliquippa. It was addressed by Mrs. Pinchot, the wife of the Governor of the State.

In June, 1933 the respondent installed at Aliquippa a so-called "Plan of Employees' Representation". The plan provides for the number and qualification of representatives under the plan. Under the original plan a representative must have been in the employ of the respondent for a period of at least one year immediately prior to the day of his nomination. As amended in May 18, 1935 the requirement that the representative be an employee was suspended during the period that the National Industrial Recovery Act (NIRA) was in force. The plan provides for the election of officers, for meetings, and for settlement of grievances.

The question of adopting this plan was not, apparently, ever put to a vote of the employees. They were invited simply to elect employee representatives. In the elections in June, 1935 (after the NIRA had been declared unconstitutional) many employees—practically all concerned in this complaint—were urged two and three times by the respondent's foremen and supervisors to vote in the election, which was being held on the respondent's premises.

III.

The Unfair Labor Practices

1. Martin Gerstner.—Gerstner was employed by the respondent in 1930 and worked regularly until his discharge on December 14, 1935. He had worked previously for 15 years with the American Rolling Mill

Company. He was first employed by the respondent as a wire man. He was transferred to the blooming mill, where, as a motor inspector, he was working at the time of his discharge. Gerstner was one of the charter members of the union; was financial secretary; and was extremely active in organization. The first meeting of the union in Aliquippa was held outside of his house. His house was watched by J & L Police; he was followed by them. In the summer of 1935 he was given less work than the other motor inspectors on the job, though some were junior to him in employment. The reason given for his discharge was that a nut had fallen off a crane which it had been his duty to inspect. Shortly before that a certain crane operator had operated a crane while intoxicated; another operated a crane without the required safety lock. Neither was disciplined. A third man who had mishandled a crane had been given one week off.

2. Harry V. Phillips.—Phillips was a motor inspector in the soaking pits until his discharge on July 20, 1935. He was a charter member of the union and its first president. The day after he, with some others, applied for the union charter he was approached by the J & L Police and offered a job on the police force, at an increased wage. At the same time, he was questioned as to his visits to Ambridge. While distributing union literature and selling the union newspaper in the streets, he was questioned as to this activity by the J & L Police. Shortly after, on his way to work (at night) he was followed by a J & L Police car. He lost sight of the car. Passing an alley, he was stopped and was struck. He asked for police protection at the station. He was told, "Get the hell out of here. You don't deserve protection." In June, 1935 he spoke at three large meetings urging employees not to vote at the forthcoming employee representation election. He asked

permission to attend a picnic of the Democratic Social Club. This was refused. His foreman told him, "If you want off for that picnic, you will have time to go to a lot of picnics in the future." The reason given for his discharge was a failure to answer certain whistles calling him to the scene of a breakdown. He had failed to answer two whistles. He had been working hard and had gone to the wash room. Because of this he had not heard the first whistle; the second he heard, but he saw a millwright go to answer it. His foreman reprimanded him, "You fellows coming out at night always want the millwrights to do all the work around here. You can get to hell out of here. You are going to have plenty of time to sell papers from now on." Shortly after Phillips' discharge, Gerstner noted and called to the management's attention the failure of another inspector to answer a whistle. No action was taken against this inspector.

3. Angelo Volpe.—Volpe was first employed by the respondent in 1914 as a laborer in the cold roll department. He was promoted in 1916 to the job of greaser at the rolls; two years later to the job of rougher. He quit in 1918 and returned in 1919. From 1919 to 1921 he was weigh master. From 1921 to 1930 he was foreman in the cold roll department. He was returned to common labor in 1930, because of his refusal to work on Easter Sunday. Shortly after he secured a job as crane operator and worked at that until his discharge on July 31, 1935. Volpe was a charter member of the union and its first vice-president. He distributed and sold union literature on the streets. He testified at the hearing held in 1934 by the National Steel Labor Board on complaint against the respondent. Shortly after he began to receive less regular employment. He was followed in the streets by J. & L. Police. He was told by them not to join the union. He was

called into the office and told by the supervisor of his department, "At J & L we don't want no union in this town. This is a company town." He was told that the American Federation of Labor could do the workers no good and was crooked. On June 12, 1935 his foreman three times requested him to vote at the Employee's Representation election and threatened him with loss of his job if he did not. The foreman later apologized for this pressure. He said, "Angelo, if you want to make an affidavit outside go ahead, but I was forced to do it."

During all his 21 years with the respondent, Volpe was never, until April 29, 1935, criticized or laid off for cause. At this time he was laid off for 15 days, because he operated his crane on a head signal from his helper rather than on the formally required hand signal. The head signal, though not absolutely proper, is not unusual, the helper often having his arms engaged by his work. When he was discharged he was told that he had hit a man in the stomach with his crane. He was not asked if this were true; he was given no chance to defend himself. Volpe knows of nothing of this sort that happened on that day in connection with the operation of the crane. Shortly after his discharge, a craneman, John Pizak, spilled a load and endangered many lives. No action was taken against him.

4. Angelo Razzano.—Razzano had been employed by the respondent as a tractor driver from 1928 until his discharge on January 13, 1936. He has been an active union member since the organization of the union. He signed 1,500 persons to membership; he has sold and distributed union literature in public places. He was called to the office of one of the plant superintendents and asked why he had attended an organization meeting at Ambridge. The company, he was told, would not "stand for" the union. He was told that the

union was corrupt, and "no damned good." The foreman told Razzano that he had special orders to keep Razzano busy and when asked why this was, the foreman said, "Do you know you are on the spot?" Razzano was discharged because it was claimed that while operating his tractor, he failed to close a door separating a part of the plant from a yard. To forget to close this door was a common occurrence. All tractor drivers have been guilty of it. Razzano had been told by the tractor foreman he was the best tractor driver that he had. One of the foremen later admitted to one of Razzano's fellow workers that Razzano's discharge was "more for his union activity, but that is what the slip called for, an open door."

5. Royal Boyer.—Boyer, a Negro, was first employed by the respondent in 1924 as a common laborer. He was transferred to the nail department as a machine operator in 1932 and worked on the nail machine until his discharge on December 9, 1935. Bayer was an active union member from the beginning. He was a leader among the Negroes of whom there were about 800 in the plant. He signed about 250 to membership. He distributed union literature. He served on committees. One of the nail inspectors warned Boyer to pay more attention to work and leave the union alone and not attend the meetings. The same inspector told this to Boyer's wife. The first suspension Boyer had ever had as a nail cutter was in October, 1935; this was either because he was charged with making bad nails or had mixed good with bad. His final discharge was laid to his supposed making of bad nails. The container—"buggy"—into which he threw his finished nails was shared by another operator. Bad nails were found in the buggy. Four days later he was discharged. The other operator had often been charged with the production of bad nails. No action was taken against him.

6. Eli Bozich.—Bozich was first employed by the respondent from 1921-1923. He was again employed in 1928 until his discharge on January 16, 1936. Until June, 1935 he was a swinger earning 60c an hour. He was asked twice by his foreman to vote at the election under the employee representation plan. Though he was not at work on the day of the election, someone was sent to fetch him to the plant to vote. He said he would not vote. Shortly after he was placed at common labor at 47c per hour. Bozich was an active union member from the beginning. He distributed union literature. He was disciplined by the respondent in September, 1934 for quitting work before time. He was disciplined again for not reporting to work. At this time he had been working only part time and it had been customary to call him when needed. He was discharged because he was found standing idle waiting to be instructed as to his next job.

7. Martin Dunn.—Dunn had been employed by the respondent for 15 years as a crane operator when he was discharged on July 9, 1935. He has been a member of the union from the beginning. He has distributed and sold union literature. He is a half-brother of Harry Phillips, the president of the union. In early July he was questioned closely by his foreman as to whether he was a union member and as to whether the union's charter had not been revoked because certain of its papers had been lost or stolen. Dunn denied his membership and purported to know nothing about union affairs. He was then called into the office of an assistant superintendent and questioned again. He was told that "nothing but a bunch of cut-throats" would belong to the union. Four days before he was discharged Dunn left the key to his crane on a bench while he went up on it to grease it. When a craneman is away from his crane he must lock it and take the key

with him so that no one else can operate it. It was not, however, unusual for a craneman to overlook or forget this duty. His foreman immediately followed him up the 300 steps of the crane to where he was working and pointed out the oversight. When discharged he asked "What for?" "Nothing personal," his foreman replied.

8. George Maroll.—Maroll was first employed by the respondent in 1921 as a crane operator. From 1921-1925 he was a millwright; from 1926 to his discharge on December 5, 1935 he was a machinist's helper. He has been a member of the union from the beginning. He has signed about 300 persons to membership. He has sold and distributed union literature. His foreman told him that he had a report of these activities; he asked Maroll as a personal favor not to join the union nor to carry union literature. He was urged to vote at the elections for employee representatives. Shortly before his discharge he was assigned to operate a drill press, work for which he had no training and for which he was not being paid. He protested. He was told that he must do the best he could. He spoiled some work. A few days later he was discharged. His discharge slip classified him as a "fitter," one who does highly skilled and highly paid work which he had never done.

9. Domenic Brandy.—Brandy was employed by the respondent in 1910. For 14 years preceding his discharge on November 28, 1935, he was a "jig man" or coal washer. He was an active union member. He was a trustee of the union. A leader among the Italian workers, he has signed 665 employees to union membership. He has sold and distributed handbills and newspapers. He testified at the hearing before the Steel Board and soon found himself being given less work. The supervisors and foremen talked to him continuously

of the union, telling him how "rotten" it was, questioning him as to his union activities. He was laid off August 5, 1935 for a "bad sample" i. e. a sample of coal washed by him which was claimed to have been badly washed. This was the first time in his 14 years in this work that he had ever been so disciplined. He was discharged on Thursday, November 28, for the same reason. He asked when the sample had been taken. "Tuesday night," was the reply. "I guess that sample ain't mine," said Brandy, "because Tuesday nobody takes any sample." He was told to get out.

10. Ronald Cox.—Cox had been employed 3 1/2 years when he was discharged on January 7, 1936, the last 2 1/2 years as a hoisting crane man. He has been a member of the union since its inception, has solicited members, has sold and distributed literature. In 1934 he was called into the office of the general manager and told that the union was a racket; that he was just paying his money to a bunch of big fat guys that sat back and smoked cigars; that if he persisted in affiliating himself with the union, the company could not tolerate his back rents, and would have to put him out of the house; that the local merchants would not extend any credit; that Jones & Laughlin would close the plant down and throw the key in the river before they would recognize an outside union. While he was being told this, the general manager wrote something on a paper. "Cox," he said, "any time you change your mind, come in and tell me, and I will tear this up." Cox was given less time. His immediate foreman would not talk to him. He had received safety awards for his work; he had never violated any of the rules for proper crane operation. He was placed on one of the cranes most difficult to operate. When he was discharged, it was necessary to secure a man from another department to operate it. On January 6, 1936 he came to work and

went over to his crane. His foreman was present watching him. Cox mounted his crane and began to work the hooks to make a lift. The foreman came over and signaled him down. "Did you inspect the crane?" "Yes," replied Cox. "Did you try your limit stops?" "No," replied Cox. "Go back," said the foreman, "and get your check and go home." This foreman had once suggested to Cox that he "try the limit stops" in a certain way. Cox considered this not only unnecessary, but dangerous and pointed that out to the foreman, who had replied, "There is a whole lot of that." The foreman was not a crane man. Cox in his operating procedure followed the man who had instructed him. When Cox went for his check he heard his foreman talking over the phone. The foreman said, "He didn't try his limit stops. Is that enough?" Then he looked up and saw Cox, and said, "I can't talk to you now."

* * * * *

It is clear that the respondent discharged these ten men because of their union activity and for the purpose of discouraging membership in the union. The initial attempts of the union to organize in 1934 were met by violent terroristic action. The coming of the State Police made such action more difficult. The advent of NIRA gave a fillip to organization. But immediately after the invalidation of NIRA the respondent began anew its campaign, this time in a more subtle form. Great pressure was brought to bear on union members to make them vote under the employee representation plan. This was relatively unsuccessful. Foremen and supervisors of the respondent vilified the union, made the union leaders continuously conscious of the respondents' active hostility.

Then in July, 1935 scarcely a month after the invalidation of NIRA and just shortly after the employee representation elections, the president of the union, his

half-brother, and the vice president were discharged. There followed a series of discharges, all of men active and vigorous in pursuit of the union's aims. Three of them were officers, others had special qualities as leaders of particular groups—Brandy, the Italian; Boyer, the Negro. In nearly every case the pattern is the same. The victim is an old employee—the least length of service seems to have been six years, the longest 26 years. During his entire employment he has served to the apparent satisfaction of the respondent. Then suddenly with seeming caprice he is discharged for a routine fault or omission, to which, normally, slight penalty or no penalty attaches. Some cases are clearer than others. Razzano, for eight years a top-notch tractor driver, is discharged for leaving open a door. Dunn, for 15 years a crane operator, is discharged for leaving a key on a bench. But the cases taken together reinforce each other, reveal the plan, the persistent attack from which each springs. We find that the respondent has discriminated with respect to hire and tenure of employment against the persons named in the complaint as amended, except Gulio Yacobucci and Marko Lukich, as to whom there is no evidence, for the purpose of discouraging membership in the union, and that by such acts, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

In the past, disputes relating to the organizational activities of labor have seriously disrupted operations in the steel industry. There was the great steel strike of 1919 in which it is said more than 360,000 employees went out on strike because the steel companies refused to meet any union representatives whatsoever for the purpose of collective bargaining. Judge Gary of the United States Steel Corporation said at that time that it is "the policy of our corporation not to deal with

union labor leaders." Coming to more recent times, in 1934, 9,844 men suffered a loss of 264,810 man-days of work with consequent serious injury to industry and commerce. We find that the aforesaid acts of the respondent tend to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

Upon the basis of the foregoing findings of fact the Board makes the following conclusions of law:

1. Beaver Valley Lodge No. 200, Amalgamated Association of Iron, Steel & Tin Workers of North America, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. By its discharge of Domenic Brandy, Angelo Volpe, Harry V. Phillips, Martin Dunn, George Maroll, Royal Boyer, Martin Gerstner, Angelo Razzano, Eli Bozich, and Ronald B. Cox, and each of them, for the reason that they and each of them joined and assisted the union, the respondent did interfere with, restrain, and coerce, and is interfering with, restrainng, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all of said acts and each of them did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

3. By its discharges of the persons aforesaid, as set forth in paragraph 2 hereof, and each of them, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said persons and each of them, and did thus discourage and is thus discouraging membership in the union, and by all of said acts and each of them did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of said Act.

4. The unfair labor practices in which the respondent has engaged and is engaging are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of said Act.

ORDER

On the basis of the findings and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Jones & Laughlin Steel Corporation:

1. Cease and desist from in any manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

2. Cease and desist from discouraging membership in the union or any other labor organization of its employees, by discrimination in regard to hire or tenure of employment or any term or condition of employment;

3. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Offer to Domenic Brandy, Angelo Volpe, Harry V. Phillips, Martin Dunn, George Maroll, Royal Boyer, Martin Gerstner, Angelo Razzano, Eli Bozich, and Ronald B. Cox employment in the respective positions formerly held by them with all rights and privileges previously enjoyed; and

(b) Make whole said Dominic Brandy, Angelo Volpe, Harry V. Phillips, Martin Dunn, George Maroll, Royal Boyer, Martin Gerstner, Angelo Razzano, Eli

Bozich, and Ronald B. Cox for any losses of pay they have suffered by reason of their discharge, by payment to each of them, respectively, of a sum equal to that which each would normally have earned as wages, at the rate set out in the appendix, during the period from the date of his discharge to the date of offer of employment as ordered hereunder, less amounts earned by each during such period;

(c) Post immediately notices to its employees in conspicuous places in each shop and yard of the Aliquippa Works stating (1) that the respondent will not discharge or in any manner discriminate against members of, or those desiring to become members of, Beaver Valley Lodge No. 200, Amalgamated Association of Iron, Steel & Tin Workers of North America, or persons assisting said organization or otherwise engaging in union activity, and (2) that such notices will be posted for a period of at least thirty (30) consecutive days from the date of posting.

And it is further ordered that the complaint be, and is hereby dismissed, without prejudice, with respect to Gulio Yacobucci and Marko Lukich.

Signed at Washington, D. C. this 9th day of April, 1936.

J. Warren Madden

Chairman

John M. Carmody

Member

Edwin S. Smith

Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

U. S. Circuit Court of Appeals
FILED
May 9 1936
OAKLEY F. DODD
Clerk

November Term, 1935

No. 8088

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JONES & LAUGHLIN STEEL CORPORATION, RESPONDENT

AMENDMENT TO PETITION FOR THE ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

TO THE HONORABLE THE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT:

The National Labor Relations Board herewith amends its "Petition for the Enforcement of an Order of the National Labor Relations Board", which said Petition was filed in the United States Circuit Court of Appeals for the Fifth Circuit on April 11, 1936, is numbered No. 8088 on the docket of said Court, and is awaiting the determination of said Court, by adding thereto the following paragraph:

7. Said order was duly served upon respondent on April 10, 1936. At all times from the service of said order upon respondent down to and including the 8th day of May, 1936, the respondent has wholly failed and refused to comply with each and every part of said order, is in default under the provisions of said order,

and upon information and belief, will not in the future comply with said order unless ordered so to do by this Honorable Court.

J. WARREN MADDEN
Chairman
JOHN M. CARMODY
Member
EDWIN S. SMITH
Member
NATIONAL LABOR RELATIONS BOARD

CHARLES FAHY
General Counsel,
National Labor Relations Board,
Washington, D. C.

DISTRICT OF COLUMBIA, ss:

J. Warren Madden, being duly sworn, deposes and says that he is the Chairman of the National Labor Relations Board and makes this affidavit in behalf of himself and of said Board; that he has read the foregoing amendment to a petition for the enforcement of an order of the National Labor Relations Board and has knowledge of the facts stated therein and that the statements made in the foregoing amendment are true to the best of his knowledge and belief.

J. WARREN MADDEN
Chairman, National Labor Relations Board

Subscribed and sworn to before me, this
8th day of May, 1936.

JOHN E. LAWYER
Notary Public, District of Columbia
My commission expires September 8, 1939

(SEAL)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

NLRB-49

In the Matter of

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

CASE NO. 8088

JONES & LAUGHLIN STEEL CORPORATION,

Respondent

AFFIDAVIT AS TO SERVICE

DISTRICT OF COLUMBIA, ss:

I, Ruth Adams being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 8th day of May, 1936, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Amendment to Petition to the following named persons, addressed to them at the following addresses:

Thorp, Bostwick, Reed, and Armstrong,
Attorneys for Jones & Laughlin Steel Corp.,
2812 Grant Building,
Pittsburgh, Pennsylvania.

RUTH ADAMS

Subscribed and sworn to before me this 8th day of May 1936.

JOHN E. LAWYER
Notary Public, District of Columbia
My commission expires September 8, 1939

(SEAL)

APPENDIX

Name	Date of Discharge	Rate of Weekly Pay (5 day wk)
Domenick Brandy	November 28, 1935	$26.00
Angelo Volpe	July 31, 1935	22.00
Harry Phillips	July 20, 1935	27.50
Martin Dunn	July 9, 1935	5.16 (per day)
George Maroll	December 5, 1935	24.00
Royal Boyer	December 9, 1935	30.00
Martin Gerstner	December 16, 1935	27.50
Angelo Razzano	January 13, 1936	4.80 (per day)
Eli Bozich	January 13, 1936	15.00
Ronald Cox	January 6, 1936	24.00

CERTIFICATE

This is to certify that the attached proceedings before the NATIONAL LABOR RELATIONS BOARD in the matter of:

CASE NO. C-57

NAME Jones & Laughlin Steel Corporation, and Amalgamated Association of Iron, Steel & Tin Workers of North America, Beaver Valley Lodge No. 200.

PLACE Pittsburgh, Pa.

DATE March 2, 1936

were had as therein appears, and that this is the original transcript thereof for the files of the Board.

_____

(Official Reporters)

6cc
AEW
Fursdon

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the Matter of:

Jones & Laughlin Steel Corporation

and

Amalgamated Association of Iron, Steel & Tin Workers of North America, Beaver Valley Lodge No. 200.

No. C-57.

Court Room No. 6, Post Office Bldg.,
Pittsburgh, Pennsylvania,
Monday, March 2, 1936.

BEFORE:

J. WARREN MADDEN, Chairman, National Labor Relations Board.

JOHN M. CARMODY, Member, National Labor Relations Board.

APPEARANCES:

ROBERT BURNHAM WATTS, Associate General Counsel and

ROBERT H. KLEEB, Regional Attorney, appearing for the National Labor Relations Board.

ALEXANDER H. SCHULLMAN and

AARON SAPIRO, 704 Grant Bldg., Pittsburgh, Pa., Appearing for Beaver Valley Lodge No. 200.

EARL F. REED,
JNO. E. LAUGHLIN and

DONALD W. EBBERTS, (Thorp, Bostwick, Reed & Armstrong), 2812 Grant Bldg., Pittsburgh, Pa., appearing for Jones & Laughlin Steel Corporation.

PROCEEDINGS.

MR. WATTS: If the Board please, I offer in evidence as Board's Exhibit 1 the Original Charge, the Complaint, copy of the Rules and Regulations of the Board, Affidavit of Service, Proof of Mailing thereof, Special Appearance and Answer of Jones & Laughlin Steel Corporation, and the Order transferring the proceedings to the National Labor Relations Board from the Sixth Region.

CHAIRMAN MADDEN: What about the Rules and Regulations as an exhibit? Is that not a rather bulky addition to the record?

MR. WATTS: It is, of course. It is a document consisting of a number of pages. That will also be true of a number of other exhibits to be offered. If the usual practice is followed, to present this case to the

Circuit Court of Appeals, I expect a stipulation may be entered into to permit the exhibits filed to be referred to without reproduction. I think it is important that the Rules and Regulations be a part of the exhibit.

CHAIRMAN MADDEN: Very well.

(The documents referred to were thereupon received in evidence and marked Board's Exhibit No. 1.)

MR. WATTS: At this time I move to amend the complaint in the following particulars:

Paragraph 3, by changing the date on which Gulio Yacobucci was discharged to December 11, 1935.

I further move to amend the same paragraph by changing as to Eli Bozichi the date of discharge from January 13, 1936, to January 16, 1936.

Finally, I move to strike out of the complaint the name of William J. Collins. In that connection I wish to submit to the Board a communication from Mr. Collins authorizing my action in his behalf.

MR. REED: No objection.

MR. WATTS: I offer that in evidence.

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 2.)

MR. WATTS: May we have a ruling on the motions to amend?

MR. REED: I have no objection.

CHAIRMAN MADDEN: The motion is granted.

MR. REED: I now offer in evidence a certified copy of the Certificate of Incorporation, the Letters Patent, Election Return, and the Treasurer's Return of the Jones & Laughlin Steel Company under the Seal of the Secretary of State of the Commonwealth of Pennsylvania.

MR. REED: I do not see that it has any relevancy but I have no objection to it if the Court thinks it has any relevancy to the proceeding. We admit that we are a corporation and doing business. I do not see why the Charter has anything to do with it.

CHAIRMAN MADDEN: What do you say, Mr. Watts?

MR. WATTS: I should like to prove the general corporate setup of the respondent, especially since I am about to introduce further evidence bearing upon its relationship to other government agencies.

CHAIRMAN MADDEN: It may be admitted.

(The documents referred to were thereupon received in evidence and marked Board's Exhibit No. 3.)

MR. WATTS: I now offer in evidence certified photostat copies of pages 1 to 7 of a registration statement filed with the Securities and Exchange Commission by the respondent company, bearing the stamp of the Commission of April 22, 1935.

MR. REED: No objection.

(The photostats referred to were thereupon received in evidence and marked Board's Exhibit No. 4.)

MR. WATTS: I now offer in evidence certified photostat copies of pages 2 to 9, inclusive, pages 12 to 30, inclusive, and pages 41 and 42 of a registration statement filed by the respondent with the Securities and Exchange Commission bearing the date of receipt by the Commission on February 26, 1936.

MR. REED: If it be understood that a great deal of this matter may be objected to if there is a printing of this record on appeal, I have no objection to it going in.

MR. WATTS: You mean so far as the mechanical diminution of the record is concerned?

MR. REED: Yes, I think there is a good deal that is not relevant here, the nature of the securities to be offered, and so on. That has nothing to do with the record.

MR. WATTS: I agree that on printing there might be a great deal of this matter that could be omitted.

MR. REED: Then I have no objection.

CHAIRMAN MADDEN: It may be admitted.

(The photostats referred to were thereupon received in evidence and marked Board's Exhibit No. 5.)

MR. WATTS: I offer in evidence photostat copies of pages 184 to 189, inclusive, of the Iron and Steel

Works Directory, having to do with the Jones & Laughlin Steel Corporation.

MR. REED: That is objected to on the ground that it has not been shown to have been any statement or declaration made or given by the Jones & Laughlin Steel Corporation, merely somebody's opinion of the business of that company, not in any way binding on the J. & L.

CHAIRMAN MADDEN: Will you please tell the nature of it and by whom it was made?

MR. WATTS: This is the usual corporate review containing a statement of the officers of the corporation, the place in which it conducts its business, the products which it makes, a review of its equipment, something of its financial setup, published, as I said in the original offer, in the Iron & Steel Works Director.

MR. REED: What year?

MR. WATTS: The current year.

CHAIRMAN MADDEN: Why do you think this should be evidence against this company?

MR. WATTS: On the ground that it is a report published by a widely used financial service which is relied upon by investors generally, reasonable men, requiring information concerning the companies therein set forth.

CHAIRMAN MADDEN: I suppose that the information published in directories of this kind is usually correct and it would be the exceptional situation if it was not correct, and that, therefore, it does have some probative value. It does not have the status of a declaration of the company, I mean on any showing that has been made so far, but it can readily be contradicted if it is in any respect inaccurate. It may be admitted.

(The photostats referred to were thereupon received in evidence and marked Board's Exhibit No. 6.)

MR. WATTS: I now offer in evidence pages 3372 to 3374 inclusive, of the Standard Corporation records, and also page 1 and page 119 of the Guide and Index section of the Standard Corporation records, the latter being under date of December 24, 1935, and the former being the current issue of the publication. I will state for the benefit of the record that this publication shows upon its face that it is issued by the Standard Statistics Company, 345 Hudson Street, New York, and it falls within the same category of a commercial publication setting out data concerning a corporation.

MR. REED: I make the same objection to it as was made concerning the previous offer.

CHAIRMAN MADDEN: They may be admitted.

(The documents referred to were thereupon received in evidence and marked, respectively, Board's Exhibit No. 7 and Board's Exhibit No. 8.)

MR. WATTS: I offer in evidence from Moody's Manual of Investments, photostat copies of pages 1735 to 1737, inclusive, and from Moody's Industrials, Section 1, page 2544, under date of October 26, 1935, and page 2038, under date of February 1, 1936, again a compilation by a commercial agency of the same character.

MR. REED: I make the same objection and the additional objection that this relates to the whole plant of the respondent, to several plants of the respondent, and not particularly to the Aliquippa plant, which is concerned in this complaint.

CHAIRMAN MADDEN: Is there any division of the information?

MR. REED: I do not see any.

MR. WATTS: I desire to show the size and extent of the business of the respondent.

CHAIRMAN MADDEN: They may be admitted.

(The photostats referred to were thereupon received in evidence and marked, Board's Exhibit No. 9, 10 and 11, respectively.)

MR. WATTS: I now offer in evidence a chart of the subsidiaries and affiliates of the respondent corporation, compiled from the material already in evidence, and, of course, subject to counsel's check as to the accuracy of that compilation.

MR. REED: That is objected to as being based upon data not properly admissible against the respondent and because it embraces plants and companies not concerned in the operation of the Aliquippa plant, which is involved in this complaint.

CHAIRMAN MADDEN: This compilation, I understand, was prepared by you?

MR. WATTS: Prepared by the Government from the exhibits already in evidence.

CHAIRMAN MADDEN: Let me see it.

(The document referred to was thereupon handed to the Chairman by Mr. Watts.)

CHAIRMAN MADDEN: Do you suggest anything, Mr. Reed, about its accuracy or inaccuracy?

MR. REED: I do not know. I have not had an opportunity to check it. I can not say whether it is accurate or not.

CHAIRMAN MADDEN: It may be admitted subject, of course, to contradiction when it is checked.

(The document referred to was thereupon received in evidence and Marked Board's Exhibit No. 12.)

MR. WATTS: I offer in evidence a map showing the warehouses of the Jones & Laughlin Steel Corporation in Pittsburgh and five other cities, taken from the Iron and Steel Works Directory of 1935.

MR. REED: That is objected to as not material and as based upon matters not properly admissible against the respondent.

CHAIRMAN MADDEN: It may be admitted.

(The map referred to was thereupon received in evidence and marked Board's Exhibit No. 13.)

MR. WATTS: I offer in evidence a map of the Jones & Laughlin sales offices located in Pittsburgh and 19 other principal cities throughout the United States, being a compilation of data from the Iron and Steel Works Directory.

MR. REED: Objected to as not material. The drawing of a line across the states from Los Angeles to Pittsburgh does not prove interstate commerce by any stretch of the imagination.

CHAIRMAN MADDEN: It may be admitted.

(The map referred to was thereupon received in evidence and marked Board's Exhibit No. 14.)

MR. WATTS: I offer in evidence photostat copy of pages 972 and 973 of Moody's Manual of Investments in so far as those pages have to do with the Aliquippa & Southern Railroad Company.

MR. REED: That is objected to as not binding upon the respondent, being no declaration of the respondent, and for the further reason that the item to which attention is directed is not the respondent, and, so far as appears, has no connection with the respondent; and, further, because it involves a railroad between two points in Pennsylvania which could in no way bear upon interstate commerce or operations in interstate commerce.

MR. WATTS: I call to the attention of the Board

that the registration statement filed with the Securities & Exchange Commission shows 100 per cent ownership of this road by the respondent, if there is any doubt about its ownership.

CHAIRMAN MADDEN: It may be admitted.

(The photostats referred to were thereupon received in evidence and marked Board's Exhibit No. 15.)

MR. WATTS: I now offer in evidence under the official seal of the Interstate Commerce Commission a copy of page 101 of the annual report of the Aliquippa & Southern Railroad Company to the Interstate Commerce Commission, showing its classification as a road subject to the jurisdiction of that Commission.

MR. REED: I make the same objection that I made to the preceding on.

CHAIRMAN MADDEN: It may be admitted.

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 16.)

MR. WATTS: I offer in evidence a photostat of an excerpt from the Iron Age, annual number, the issue of January 2, 1936, being pages 53 and 54, the compilation being an illustrative one to show the disposition of steel consumed in 1935 and its relation to various industries throughout the United States.

MR. REED: That is objected to as not admissible against the respondent for the reason that it does not concern the business of the respondent separately, and bears upon the production of iron and steel generally in the United States with no relation to the Aliquippa plant of the Jones & Laughlin Steel Corporation.

CHAIRMAN MADDEN: Objection overruled. It may be admitted.

(The photostat referred to was thereupon received in evidence and marked Board's Exhibit No. 17.)

MR. WATTS: I offer in evidence a copy of the 12th Annual Report of the Jones & Laughlin Steel Corporation and subsidiary companies for the fiscal year ended December 31, 1934.

MR. REED: No objection.

(The report referred to was thereupon received in evidence and marked Board's Exhibit No. 18.)

MR. WATTS: I offer in evidence a compilation on two pages, for the month of November, 1935, of the respondent corporation, Aliquippa Works, Monthly Safety Standing. This compilation sets out a series of departments of the respondent, gives the hours worked, and particulars of that general character.

CHAIRMAN MADDEN: Prepared by the respondent?

MR. WATTS: Prepared by the respondent I assume.

MR. REED: I do not see what bearing this has on this issue.

MR. WATTS: It shows the size and nature of the operation of the respondent, something about the man-hours worked in various departments, all bearing, of course, on the issue of whether or not the respondent is a local enterprise or whether it is not.

MR. REED: I do not see that the number of employees or the number of man hours shows that the company is engaged in interstate commerce.

MR. CARMODY: May I ask a word about that? That is a safety report?

(The document referred to was handed to Mr. Carmody by Mr. Watts.)

MR. CARMODY (continuing) Monthly Safety standing. I note from the answer that these men were discharged for inefficiency. I wonder whether during the course of the testimony there will be evidence that part of that inefficiency is as to safety? I notice also there is reference here to the fact that somebody endangered somebody's life. I wondered whether in that event safety records ought not to be admissible as something we might need to know about.

MR. WATTS: I have no doubt that the respondent may offer certain records as the basis for its action in discharging these men. I do not know, of course.

MR. REED: I have no objection to this exhibit. I do not see that it bears on the case, but if you think it is important I have no objection.

CHAIRMAN MADDEN: Do you recall, Mr. Reed, that Judge Otis in holding unconstitutional one of our enterprises out west seemed to lay considerable stress on the fact that the respondent there was a small enterprise? I suppose by the same token it would have made a difference if it had been a large one.

MR. WATTS: The exhibit is received?

MR. REED: Yes, I withdraw the objection.

(The document referred to was received in evidence and marked Board's Exhibit No. 19.)

MR. WATTS: I now offer in evidence a two-page display advertisement of the respondent corporation, published in the Iron Age magazine of January 2, 1936.

MR. REED: Will you supply the spectators with copies too?

MR. WATTS: I think we will do our best to give wide public knowledge of the activities of the respondent.

(The advertisement referred to was thereupon received in evidence and marked Board's Exhibit No. 20.)

MR. WATTS: I now offer in evidence an advertisement appearing in the Pittsburgh Sun-Telegraph of December 31, 1935, published by the respondent corporation.

MR. REED: No Objection.

(The advertisement referred to was thereupon received in evidence and marked Board's Exhibit No. 21.)

MR. WATTS: I now offer in evidence under the Seal of the Department of the Interior a chapter from the Minerals Year Book of 1935 covering iron ore, pig iron, ferro alloys and steel, being pages 377 to 418, inclusive.

MR. REED: I object to this as not in any way binding upon the respondent company and not material to this issue. It seems to be just a general discussion of the ore reserves of the United States with no particular reference to any company.

MR. WATTS: It is a study of the ore reserves, as counsel says, and establishes, graphically, the principal centers from which those ores have to be obtained, and it goes into other details as to their use in industry.

CHAIRMAN MADDEN: It may be admitted.

(The paper referred to was thereupon received in evidence and marked Board's Exhibit No. 22.)

MR. WATTS: I offer in evidence as an issue of the Department of the Interior, Bureau of Mines, being Mineral Market Report of January 10, 1936, being an advance summary of the iron ore industry of 1935.

MR. REED: The same objection as to the last exhibit.

CHAIRMAN MADDEN: It may be admitted.

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 23.)

MR. WATTS: I now offer in evidence under the seal of the National Recovery Administration a certified copy of the report of the directors of the American Iron and Steel Institute of the operation of the Code of Fair Competition, this report being signed by officers of the respondent company.

MR. REED: What officers?

MR. WATTS: Mr. Hackett, being the Chairman of the Committee on Commercial Matters; Mr. Todd, General Manager of Sales, being a member of the Committee, and then on the Committee on Labor, Mr. F. Feiger, General Manager of the respondent company.

MR. REED: This is objected to for the reason, first, that it is not material; second, that it does not appear to have been signed by any of the officers of the respondent company, there being merely a list of directors of the Iron and Steel Institute attached to the report; third, for the reason that the National Recovery Administration having been in existence without legal authority, its reports and certifications have no effect in law, and are not admissible.

CHAIRMAN MADDEN: It may be admitted.

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 24.)

MR. WATTS: I take it, sir, there is no question as to the fact that the respondent is a member of the Iron and Steel Institute?

MR. REED: No. But whether the respondent joined in the report or not, I do not know.

MR. WATTS: Yes.

MR. REED: I would like to correct that last statement. I am not sure that the corporation is a member. The membership is confined to the officers.

MR. WATTS: That is correct, I think, sir; its officers. I now offer in evidence a series of excerpts from the magazine Steel Facts, and I ask the Board to take judicial notice of the fact that that magazine is published by the American Iron and Steel Institute, 350 Fifth Avenue, New York.

The first excerpt is from the December, 1935, issue, entitled, "12 per cent of Railroads' Freight Traced to Steel Industry's Activity".

MR. REED: Are you going ahead with all of them first?

MR. WATTS: I suppose you have a sort of blanket objection applying to the whole thing.

MR. REED: Yes, I make objection to this offer on the ground, first, that this respondent is not a member of the Iron and Steel Institute. The fact that some of its officers may belong to it would in no way affect the respondent.

Second, for the reason that even if it were a member or its officers were members, it is not bound by any declaration of that institute to which it does not subscribe.

Further, because a publication alleging to have been put out by that organization could not make statements which would be binding upon this company because its officers happened to belong to the organization.

And because, further, the matter is not material in this issue.

MR. CARMODY: Do we have anywhere a statement of the purposes of that institute and the conditions of membership?

MR. WATTS: Well, if your Honor please, I have

in front of me the Annual Statistical Report. I do not know whether that contains it or not. I will have my associate look at it and see if it does. If not we will bring it.

I point out to the Board that the exhibit now offered is one containing statistical information, which statistical information is published by the American Iron and Steel Institute, of which the officers of the respondent are admittedly members. I think this Board, further, can take judicial notice of the fact that the magazine, "Steel Facts", in so far as it presents statistical information, is widely disseminated and given respect and relied upon by the members of the industry and by the public generally.

MR. CARMODY: Do you know whether a person or individual who does not have a responsible executive position with a steel company can be a member of that institute?

MR. WATTS: I am informed that one can not. I do not pretent to know the details.

MR. CARMODY: Are there no company memberships? Are they all individual memberships?

MR. WATTS: I understand that is the case also.

MR. CARMODY: No company memberships?

MR. WATTS: That is right.

CHAIRMAN MADDEN: This is admitted, Mr. Reed, not as a statement of the company or binding on the company. This is admitted as a probably credible statement made by an informed authority. As I said in connection with the other offer, from what we know of publications of this kind we have a right to assume that their statements are correct. They subject, always, of course, to the same opportunity, which the respondent always has, of contradicting those statements. Is this an offer of a number of things?

MR. WATTS: No, it is a separate one. There are a number about to follow it immediately but I would

like to have them marked separately as exhibits. They are all in the same category and all subject to the same objection.

MR. REED: The same objection, I assume, and the same ruling.

MR. WATTS: The Board has just stated that these exhibits are not binding on the respondent. I assume that ruling means not binding as declarations against interest. I hope it does not mean they are not binding in any manner against the respondent.

CHAIRMAN MADDEN: It is meant that it is recognized not as a statement of the respondent.

MR. WATTS: I just wanted to have the record clear.

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 25.)

MR. WATTS: I now offer in evidence an excerpt from the May, 1935, issue of the same magazine, an article entitled, "Steel Investment $4,705,976,350 at end of last year."

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 26.)

MR. WATTS: I now offer in evidence an excerpt from the December, 1935, issue of the same magazine, an article entitled, "Identify Fourteen Industries within Iron and Steel Industry."

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 27.)

MR. WATTS: I now offer in evidence from the May, 1935, issue of the same magazine, page 4, and a

portion of page 5, together with a chart, entitled, "New Living Standards Reflected in Changing Demands for Steel", the chart setting up the usual steel in the railroad, automotive, and other industries.

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 28.)

MR. WATTS: I now offer in evidence from the May, 1935, issue of the same magazine an article entitled, "49 Million Tons of Material Consumed by Blast Furnaces, 1934."

It might be interesting to the Board to read one paragraph of this statement:

"To transport 49,000,000 tons of the raw material at one time would require 10,000 trains, each one mile long. A motorist halted at a grade crossing would have to wait more than 8 days and nights for the trains to pass at 50 miles per hour."

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 29.)

MR. WATTS: I now offer in evidence from the same magazine, October, 1935, issue, an article entitled, "Auto Output, Steel Mill Employment, go Hand in Hand", together with a map showing the respective conditions throughout the United States of steel mills and automobile plants.

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 30.)

MR. WATTS: I now offer in evidence Page 3 of the October, 1935, issue of the same magazine, being

entitled, "For Every Ten Men Making Steel, Work for Five More is Created in Furnishing the Necessary Raw Materials", together with a chart showing in general the movement of ore from the northern ore ranges to the various steel plants.

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 31.)

MR. WATTS: I offer in evidence from the December, 1935, issue of the same magazine page 6 and a portion of page 7, entitled, "American Steel Goes to Nations without Adequate Steel Output", together with a graphic presentation of various countries importing United States steel and steel products, and a statistical compilation of exports of steel to various countries.

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 32.)

MR. WATTS: I offer in evidence from the November, 1934, issue, page 7, two articles, the first entitled, "Railroads Enter Alloy Steel Age", and the second entitled, "100,000 Variations in Products of Steel Mills".

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 33.)

MR. WATTS: I offer in evidence from the December, 1935, issue, page 4, and the greater part of page 5, an article entitled, "Rails Most Thoroughly Tested of All Heavy Steel Products".

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 34.)

MR. WATTS: I offer in evidence, set up on one backing, two articles, the first from the October, 1935, issue of the same magazine, page 2, being a compilation of the production of steel ingots for each month of 1934 and for nine months of 1935.

The second article is from the September, 1935, issue of the same magazine, and is entitled, "Modern Steels Made to Order".

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 35.)

MR. WATTS: I now offer in evidence a newspaper clipping which I am informed was made up by the newspaper from a statement issued by the company. I understand there is no objection to the accuracy of the figures. The article has to do with the income account of the respondent in 1935 and 1934.

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 36.)

MR. WATTS: I now offer in evidence a pamphlet, "National Forecast of the Regional Shippers Advisory Boards", first quarter of 1936, showing the products involved, the number of carloadings for 1935 and 1934, and the increase or decrease in carloadings over the preceding year. The particular compilation is divided into various regions, and the one with which we are now dealing is Region No. 4. This exhibit is offered, if I may add, to show the rail traffic dependent upon iron ore and allied products being shipped.

MR. REED: It is objected to as not material and not binding upon the respondent for the reason that it does not appear by whose authority or how the figures stated therein were obtained.

MR. CARMODY: Whose compilation was that?

MR. WATTS: May I just hold that over for a moment, and I will make another offer which will perhaps clarify the first. I offer in evidence a pamphlet entitled the "Alleghany Regional Advisory Board in Cooperation with and Advisory to the Car Service Division, Association of American Railroads", being the proceedings of a joint committee meeting of executive and railroad contact committees held at the William Penn Hotel December 18, 1935, which was attended by the Assistant Traffic Manager of the respondent, and sets forth the exact method in which the forecasts of carloadings are made, and shows some of the forecasts for this Fourth Region.

MR. REED: Do I understand that if some officer of the company goes to a meeting, the resolutions of that meeting are binding on the respondent?

MR. WATTS: That all depends, sir. When they go to a meeting which has to do with the car requirements of the American Railroads, and they create, as a result of that meeting, an estimate which is relied upon by the Interstate Commerce Commission and by other national services, I think it might be of some interest to an administrative body to show the volume of railroad traffic.

MR. REED: You are not supposed to be offering interesting things. You are supposed to offer something to show they are engaged in interstate commerce.

CHAIRMAN MADDEN: They are admitted.

(The two documents last offered were thereupon received in evidence and marked respectively "Board's Exhibit No. 37" and "Board's Exhibit No. 38.")

MR. WATTS: I offer in evidence photostat copies of pages 208 to 210, inclusive, January 6, 1936, issue of

the magazine "Steel", being a compilation of the distribution of steel in gross tons to various consuming groups, and other discussions of the uses of steel and alloys, also setting forth the production of pig iron, steel ingots, castings, and the figures as to exports and imports.

MR. REED: The same objection that was made to the other articles from this magazine, "Steel".

CHAIRMAN MADDEN: The same ruling.

(The photostats referred to were thereupon received in evidence and were marked Board's Exhibit No. 39.)

MR. WATTS: I offer in evidence the November, 1934, report of the Federal Trade Commission to the President with respect to the basing point system in the iron and steel industry, this document being under the Seal of the Federal Trade Commission, and, therefore, self-proving.

MR. REED: What bearing does this basing point report have on a labor dispute at Aliquippa, Mr. Watts?

MR. WATTS: The statement and the reports concerning the system, which I should like to state now are further carried on by releases of the American Iron and Steel Institute, go into the basing point system and establish, at least to the satisfaction of the American Iron and Steel Institute, that so closely allied and so much a part of the steel industry is the transportation that it must be considered as reasonable to establish the basing point system. In other words, we have a peculiar, unusual price setting device used by the steel industry which has been examined into by the Federal Trade Commission to determine whether or not it is one of the many attributes of monopolistic control.

I am about to offer in evidence the American Steel Institute's official explanation of this situation in which, I have indicated in general, it takes the position that the transportation throughout the United States of these products is so much a part of the industry that the steel companies are entitled so to control it.

MR. REED: I object to it as not material.

CHAIRMAN MADDEN: It is admitted.

(The report referred to was thereupon received in evidence and marked Board's Exhibit No. 40.)

MR. WATTS: I now offer in evidence a report entitled, "Basing Points and Competition in Steel", issued by the American Iron and Steel Institute, dated March 13, 1935.

MR. REED: The same objection.

CHAIRMAN MADDEN: It may be admitted.

(The report referred to was thereupon received in evidence and marked Board's Exhibit No. 41.)

MR. WATTS: I now offer in evidence from the United States Department of Labor's Monthly Labor Review of 1936 the report, Serial No. R. 339, Table No. 6, which appears at page 9, and Table No. 4, which appears at page 18, being a compilation of strikes and strike causations as reported by the Department.

MR. REED: Objected to as not material.

CHAIRMAN MADDEN: Objection overruled.

(The report referred to was thereupon received in evidence and marked Board's Exhibit No. 42.)

MR. WATTS: I offer in evidence under the Seal of the Department of Labor from the Bureau of Labor

Statistics a compilation of strikes and lockouts in blast furnaces, steel works and rolling mills in 1934, and January to July, inclusive, of 1935, showing the major issues involved in the several controversies.

MR. REED: Objected to as not material.

CHAIRMAN MADDEN: Admitted.

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 43.)

MR. WATTS: I offer in evidence a pamphlet entitled "Collective Bargaining in the Steel Industry; Why Steel Favors Employee Representation Plans and is Opposed to Professional Labor Unions" published in June, 1934, by the American Iron and Steel Institute.

MR. REED: Objected to as not material and in no way binding upon the respondent, there being no proof that the respondent issued this pamphlet or had anything to do with it.

CHAIRMAN MADDEN: Admitted.

(The pamphlet referred to was thereupon received in evidence and marked Board's Exhibit No. 44.)

MR. WATTS: I offer in evidence from the Monthly Labor Review, Volume 42, No. 1, January, 1936, Table No. 6, appearing at page 152. That table is entitled, "Methods of Negotiating Toward Settlement of Strikes and Lockouts Ending in December, 1935".

MR. REED: Objected to as not material and in no way affecting the respondent.

CHAIRMAN MADDEN: It may be admitted.

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 45.)

MR. WATTS: I offer in evidence the report of the Chairman of the Federal Trade Commission to the Senate of the United States, printed in the 73rd Congress, 2nd Session, Senate Document No. 159, entitled, "Practices of the Steel Industry Under the Code".

MR. REED: Objected to as not material, in no way binding upon the respondent, and not any official publication that is entitled to be considered in evidence.

CHAIRMAN MADDEN: And not what?

MR. REED: Not entitled to be considered as evidence.

CHAIRMAN MADDEN: It is an official publication, is it not?

MR. REED: I do not know what "official" means. It is a report of some person.

CHAIRMAN MADDEN: That person is the Chairman of the Federal Trade Commission, as I understand.

MR. REED: That does not make it an official report, it seems to me. It depends on what you mean by "official report". Some reports of Government agencies are entitled to be admitted because they are reports of Government agencies. I do not think the report of a chairman of a committee is such a report.

CHAIRMAN MADDEN: I should think, if it were a report which related to his duties and carrying on his duties, it would be. It may be admitted.

(The report referred to was thereupon received in evidence and marked Board's Exhibit No. 46.)

MR. CARMODY: May I see it, please, sir?

MR. WATTS: Yes sir (handing paper to Mr. Carmody).

MR. CARMODY: I offer in evidence under the

Seal of the Library of Congress, over the signature of the Chief Assistant Librarian, photostat copies of pages 4 and 5, and also of pages 11, 12 and 13 of a document entitled, "66th Congress, 1st Session, Senate Report No. 289, Investigating Strikes in Steel Industries, November 3, 1919".

MR. REED: This is objected to as not material, too remote to have any evidentiary value, and being merely a conclusion or a statement from various persons in 1919 about a strike occurring at that time, with no bearing upon this controversy at all.

CHAIRMAN MADDEN: It may be admitted.

(The photostats referred to were thereupon received in evidence and marked Board's Exhibit No. 47.)

MR. WATTS: I offer in evidence certified copy of the Charter issued by the Amalgamated Association of Iron, Steel and Tin Workers to Beaver Valley Lodge No. 200, on August 4, 1935.

(The document referred to was thereupon received in evidence and marked Board's Exhibit No. 48.)

MR. WATTS: I wish to read into the record for the information of the Board from Exhibit B-48, just received, the following:

"The following persons who shall constitute Beaver Valley Lodge No. 200 of the State of Pennsylvania, located at Aliquippa:

"Harry V. Phillips, President,
"Angelo Volpe, Vice President,
"B. S. McDonald, Recording Secretary,
"Martin Gerstner, Financial Secretary.
"James A. Dunn, Treasurer,
"Andrew Smith, Guide,
"Allen James, Inside Guide,

"E. L. Pander, Outside Guide."

Some of those names appear as the names of complainants in this proceeding.

MR. REED: What is the date of that charter?

MR. WATTS: August 4, 1934.

MR. REED: You do not contend that they were the officers at the time of this complaint?

MR. WATTS: I think some of them are. We will bring that out. Some of them are and some are not. Mr. Payne?

WALTER J. PAYNE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Watts) Where do you live, Mr. Payne?

A Walnut Street, Follansbee, West Virginia.

Q What is your present occupation?

A W. P. A. worker.

Q In September of 1934, how were you employed?

A I was employed as an organizer by the Amalgamated Association of Iron, Steel & Tin Plate Workers of North America.

Q By whom were you paid?

A Louis Leonard, Secretary-Treasurer of the Amalgamated.

Q On the 7th day of September, 1934, did you receive instructions to endeavor to facilitate the organization of the employees of the Jones & Laughlin Steel Company at Aliquippa, Pennsylvania?

A I did.

Q Pursuant to those instructions, where did you go?

A I proceeded to headquarters from my home, on September 7th. There I conferred with Mr. Leonard and other officials and also with the committee that was in at the time from Aliquippa, and after that I

proceeded to Ambridge in the company of the delegation, and also John Pafalski, an organizer.

Q After you arrived at Ambridge—by the way, where is Ambridge, from Aliquippa?

A It is just across the river, within three or four miles, I would say.

Q After you arrived there in Ambridge, what did you do, if anything, looking toward general organizing activities?

A When I arrived at Ambridge we conferred on the meeting which took place there and I also received quite a bit of information about conditions prevailing in Aliquippa at that time, and what to expect, from these different men.

Q Did you have any meetings there in Ambridge?

A We had from that time on a series of meetings. This was on Friday, September 7th. On Saturday we had a meeting in an open space at the corner of 11th and Merchant Streets.

Q That was the day after you arrived in Ambridge?

A The day after I arrived.

Q At that time, so far as you are aware, were there any persons employed by the Jones & Laughlin Company present other than workers?

A Plenty of them, and they were quite noticeable. I did not know any of them myself, but they were pointed out to me.

Q Were any of those persons in uniform?

A No, plain clothes.

Q Were any of those persons armed so far as you know?

A So far as I know and from what I saw they were.

Q Now, did you go to Aliquippa and endeavor to

obtain a place in which a meeting might be held over there instead of this vacant lot in Ambridge?

A. Yes.

MR. REED: May I interrupt just a minute? Is this going into the merits of the labor controversy or the jurisdictional phase of it? Because I want to make an objection at the close of the jurisdictional phase.

MR. WATTS: I haven't any particular line. I may put in some more on jurisdiction, but I for your purpose—

MR. REED: If the Board please, we have entered a special appearance here and raised the question of the jurisdiction of the Board on the theory that the company is not engaged in interstate commerce. Now, a certain questionnaire was admitted and we offered to make a certain stipulation with respect to the manner of doing business, and we think that issue ought to be disposed of first.

We are entitled to a preliminary determination of that question, and I think the testimony first ought to go to the jurisdiction, and let us put this evidence in on the manner of doing business by stipulation if it is satisfactory to Mr. Watts, so that we have a record that goes first to the preliminary question of jurisdiction.

MR. WATTS: If the court please, I do have some other material here which I want to produce on the issue of the Interstate Commerce. I prefer not to do it at this moment.

CHAIRMAN MADDEN: It seems to me that the respondents are under their special appearance entitled to a ruling as to whether we are asserting jurisdiction over them.

MR. WATTS: If the Board please, you will receive from the testimony of all of these witnesses greater or less amounts of testimony as to the operation of the respondent's plant up there. I can not

carve out here mechanically those portions of the witness's testimony which might be dropped in the category of commerce or not commerce as distinct from other testimony on the unfair labor practices which have been involved here.

I say I can not do it—I can do it by trying my case twice; first, we would go through the witnesses here—I will have men who are concerned, for instance, in the operation of the track system and in relation to the company's product with the railways. I will have men here describing how these operations are carried on, and I certainly do not wish to bound by saying that at this point I cease my claim of using any facts in support of interstate commerce. Neither do I see how the Board can, under any type of pleading, be placed in the position of, before it hears the full case, deciding whether or not it has jurisdiction.

MR. REED: You are entitled to a preliminary determination of that question when you raise a question of jurisdiction. Now, I do not say that if counsel in the course of somebody else's testimony, if something about commerces comes out or appears, that the Board may not consider it, but I think the testimony produced by the Government and by the respondents on jurisdiction ought to be taken first and a determination made on that.

MR. WATTS: Of course, in one sense every respondent who comes before this Board is making a special appearance in that he urges that the Board has no jurisdiction over him. Now, this Board and no other administrative body can be placed in the position of having to decide that and then go back over all that ground and pick out any particular substantice pieces of proof which it requires.

CHAIRMAN MADDEN: What is the stipulation that Mr. Reed speaks of?

MR. WATTS: There is a proposed stipulation

which I have looked at only casually, but in the course of having looked at it casually, I do not care to enter into it, so that is of no point.

MR. REED: It is in response to a questionnaire that you gave us, and we gave you the figures and then wrote it into the form of a stipulation. It is not just something we devised ourselves.

MR. WATTS: I have certain objections to portions of that stipulation which I think would be better discussed between Mr. Reed and myself off the record than it would be here.

CHAIRMAN MADDEN: I will say this, that the line of questioning that you have started on with this witness seems to indicate that you are now going into the matter of the merits of this labor dispute. Now, I think that as much as you have in the way of separate testimony with reference to commerce and not with reference to the merits of the dispute, might better go in at this time and I think it would be well to give the respondents the opportunity at this time to put in whatever they want to put in.

MR. WATTS: Certainly the Board is not going to make a decision at this stage of the proceeding whether it has or has not jurisdiction, I take it. Frankly, I do not see how that can be done until the Board has the testimony of all the witnesses before it.

Now, this particular witness is testifying at this time for a reason which will become apparent after he testifies, and that is that he is not going to be talking about things happening in 1936. Without knowing the facts that he is about to testify to, other testimony which might be submitted would come in in a disjointed way and would have no apparent relation to the testimony of other persons, and if we were forced to the position of selecting from the testimony of all the witnesses what they know about interstate commerce as distinct from what they knew about unfair

labor practices, I should have to ask the Board to adjourn the proceedings to permit me to rearrange my entire case with that in mind, because I just can not do that on the wing here. Neither do I know of any precedent which would so require.

MR. REED: The usual practice on a preliminary injunction is to have a preliminary hearing on the question of jurisdiction, because the respondent, if that is decided against him, may decide either not to cross examine or not to produce witnesses. He has a right to have the issue raised and decided at least for the present. The Board, of course, may change his mind later, but he has a right to have the ruling against him on the matter of whether or not the Board has jurisdiction. Otherwise he is put to an election that is unfair, and that is the usual practice on a special appearance.

J fls

Furs. j fls. Whl. 9

MR. WATTS: No election is involved here. Under the Board's own regulations, participation in a hearing constitutes no waiver of any rights, constitutional or otherwise, which may be interposed here. This is not a question like the validity of a service of a subpoena upon somebody. That is an easily isolated inquiry which can be disposed of in advance of trial. Here is a question which goes to the heart of the whole proceeding. Either this Board has jurisdiction over this respondent or it does not. Now, if it is going to determine that upon part of the testimony, it has put itself in the position of making the determination without a full record before it.

CHAIRMAN MADDEN: As Mr. Reed suggested, it would not necessarily be a final determination, and if it should develop that it was so apparently lacking in jurisdiction, of course the hearing of the rest of the case would be a sheer waste of time on the part of every-

body. When do you propose to show how this plant operates?

MR. WATTS: We have shown a great deal of that already although I have not spelled it out from the exhibits. If the Board wishes to get, for instance, a quick picture of the situation they can read the more recent Securities and Exchange registration statement and you would have a very fair bird's eye picture of what is already in evidence about this respondent. But I certainly do not want to stop there. As I say, I am perfectly willing to attempt to segregate this material, but I think it is a precedent which will occasion the greatest difficulty in subsequent action of the Board.

CHAIRMAN MADDEN: What is it that you propose, Mr. Reed, and what is the nature of the testimony that you propose to put in?

MR. REED: The manner of operating the plant, to show whether or not it is engaged in interstate commerce. I assumed we would be entitled to a preliminary hearing, otherwise I do not see how anyone who objects to the jurisdiction of a board can safely go before it. You will either have to go into court to enjoin the hearing and then get your hearing on jurisdiction or you will have to get it preliminarily before the Board. In the Portsmouth case that was done. It makes a clear record and shows whether or not the Board takes jurisdiction and gives you a chance to decide what you will do if the Board takes jurisdiction. Otherwise, if it is going to be mixed right up with the labor dispute, I do not see how anyone can safely raise that question. I think we are entitled to a preliminary determination of that.

If Mr. Watts wants me to call my witnesses now on the question, I am satisfied to do that, and I am satisfied that anything that subsequently comes from his own witnesses should be considered by the Board, but I am not satisfied to go into a hearing of the labor controversy until we have presented those facts.

CHAIRMAN MADDEN: What is wrong with that; I mean, permitting Mr. Reed to put in such testimony as he wants to at this point, tending to show that their business is not an interstate business?

MR. WATTS: Well, for one thing I haven't all of our proof in on the subject. I suppose we can take the portion that we have in evidence now and take a little bit of his and then take some more of mine, but somehow it does not fall in with what I hope are my distinctive ideas of logic.

CHAIRMAN MADDEN: Mr. Watts, unless you care now to go further into this now we will hear what Mr. Reed wants to put in.

MR. WATTS: I do not care to do so now. Step down, Mr. Payne.

(Witness temporarily excused.)

CHAIRMAN MADDEN: We will recess for five minutes.

(A short recess was taken.)

MR. REED: Mr. Jamieson.

F. E. JAMIESON, called as a witness for the Respondents and, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Reed) What is your full name?

A F. E. Jamieson.

Q What is your occupation, Mr. Jamieson?

A I am manager of orders, Jones & Laughlin Steel Corporation.

Q How long have you been employed by the Jones & Laughlin Steel Corporation?

A It will be 24 years this year, in August.

Q Are you located at Alequippa? Where is your office?

A I am at the general office.

Q The general office? Are you familiar with the Alequippa plant?

A Yes, sir.

Q What are the principal products of the Alequippa plant? What do you make there?

A Well, we produce tubular products, that is, pipe, tin plate, wire, wire products, some structural sizes of shapes, bars, skelp, sheet bars, billets, and slabs.

Q Those are all manufactured products, are they?

MR. WATTS: I object to that as calling for a conclusion.

CHAIRMAN MADDEN: Objection overruled.

MR. WATTS: Exception.

Q (By Mr. Reed) The question was, are they all manufactured products?

A All manufactured, yes, sir.

Q Now, what materials do you use in manufacturing those products?

A Well, we start in with the iron ore and coke and limestone which go into the blast furnace in successive layers and are melted down to produce what is known as pig iron. That is mostly in the case of Alequippa used in the molten state; very little of it is actually pigged, molded into small pigs, as they call them. It is used in the molten shape to produce either Bessemer or what we call open hearth steel. In the Bessemer converters and the open hearth furnaces the stell is poured into ingot molds, as we call them, that stand upright, and the stell is taken out of the open hearth or the Bessemer to the ladles, and from the ladles poured into the molds. It is taken away then and allowed to cool off, and after it is cold, or after it is cool enough, the mold is taken off and the resulting ingot is then used for the further production of our products.

MR. CARMODY: Doesn't it go into a soaking pit first?

THE WITNESS: I was just going to say that the next step is to put it into the soaking pit. The soaking pit is just another way of heating the furnace, down in the ground. The steel is brought up to the right temperature in the soaking pit and taken to the blooming mill. At that point it is rolled down from this ingot form into slabs which are rectangular, flat pieces of steel, or blooms which are square, and from there in the case of Alequippa the slab goes to the shear and is shipped outside of the plant to the South Side works. The bloom goes to the village mill or the bar mill where it is reduced to billets or sheet bars or skelp. Skelp is used for making pipe, some sizes of pipe. The billets are used for rolling down into angles or flat bars of skelps or wire, made into rod billets, which are used for making wire.

The blooms are, some of them, rolled into rounds in our seamless tube department for making seamless tubing.

Sheet bars, so-called, are taken to the tin plate department for making tin plate.

We ship some sheet bars outside the plant to customers. Some of the billets are shipped outside, but very little of them.

I do not know that there is anything further that I can say about our use of the steel except if you would ask me questions.

Q (By Mr. Reed) Then I gather from your testimony that what comes into your plant is coal and ore and minerals, scrap iron, and things of that nature, and that what goes out after manufacture are tubes, pipes, sheets, and finished products. Is that right?

A All we get is, we start with the iron ore and the coke.

Q And that there are two stages, one where you come out after melting and have pig iron, and then after you manufacture that into steel, is that right?

A Two stages.

Q Now, in the incoming products, are they used directly or are they kept in storage?

A Most of our production is used directly.

Q Do you have supplies on hand of coal?

A Coal?

Q Yes, do you keep a supply of coal?

A We keep a limited amount in stock.

Q What quantity, approximately, do you know?

A I beg pardon?

Q Do you know what quantity, approximately; how long a supply?

A I do not know. I really have no idea. We keep enough on hand to take care of any emergencies or interference with the regular supply.

Q Is your ore piled up?

A The ore is piled up. We have to take that in in a definite season through the year. I think it runs from May through October, when iron ore can be brought down from the lakes by water.

Q When it comes in it is put on the stock pile, I assume?

A We store some at the lake, and some, most of it at Pittsburgh, at Alequippa. In the case of the Alequippa plant practically all of it is stored there.

Q What about limestone? Is it stored?

A Limestone, we keep a limited amount in stock ahead of the plant.

Q Where do you get most of your coal?

A What is that?

Q Where do you get most of your coal?

A Coal?

Q Yes.

A The Vesta Coal Company is the producer of our coal.

Q That is a subsidiary company?

A Yes.

Q And J. & L. buys the coal from Vesta? Your company buys the coal from the Vesta Coal Company?

A Yes, we buy it.

Q How does it come to the plant?

A It comes down the river in barges.

Q Where is the property of the Vesta Coal Company?

A It is in Washington County, Pennsylvania.

Q And by what route does it come down from there?

A The Monongahela and Ohio rivers.

Q Entirely within the State of Pennsylvania?

A Yes.

Q What about limestone? Where is it gotten?

A Limestone I am not so sure about. It comes from Martinsburg, West Virginia, I think, largely. There is some in Pennsylvania, but I think most of it comes outside.

Q That comes by rail, does it?

A That is by rail.

Q What about your ore?

A The ore comes in by rail.

Q Comes from the lake ports by rail?

A Yes, from the lake ports.

Q Is there any article that comes in and is only worked upon in your plant, or is everything manufactured from raw materials in the Alequippa plant?

A Put that again, please.

Q Perhaps I misled you in the question. Do I understand that your entire product is made from raw materials?

A Yes, sir.

Q There is nothing that is just worked upon in your plant?

A No, sir, everything is worked out.

Q How many mills do you have at Alequippa? What is the extent of the plant there?

A How many mills?

Q Yes.

A Do you want that in detail?

Q No, just a brief statement about it.

A We have in the tin plate department, what we call the hot mills, that is, breaking down the bar into sheets. There are 31 there. There are other mills, about ten or twelve, outside of that.

Q How many departments of the mill are there?

A Six departments.

Q How many blast furnaces do you have?

A Five.

Q Do you sell any coke from the Alequippa plant?

A No, sir.

Q Your coal is first manufactured into coke for use with the steel, I assume?

A Yes.

Q And it connection with that there are certain by-products manufactured?

A Yes.

Q Which you sell, I suppose?

A We sell the by-products, that is, some of them, and use some of them.

Q When the raw materials go into the blast furnace and you make pig iron, is that at that stage earmarked for any particular customer, or is that a general supply of iron?

A No, not at that point.

Q When does it first take an identity as belonging to a certain order or a certain customer?

A When we start making the open hearth or Bessemer steel ingots.

Q Then you make the specifications for a particular order?

A We are then working largely to specifications,

or to some small extent making for stock, but largely working to definite orders or specifications.

Q When you have finished the manufacture of these products how are they sent to the customers? How are they shipped?

A By rail, except some small portion that goes by river.

Q In barges?

A In barges.

Q Down the Ohio River?

A Yes, down the Ohio River.

Q The plant is located on the Ohio River, is it not?

A Yes, sir.

Q Did you compile certain figures as to the cars you used in a year, and so on, at the request of—

A I have no figures on that, Mr. Reed.

Q You have the figures, I believe, but you did not compile them?

A Oh, yes, we have. Such a record is kept.

Q Do you have a copy of the stipulation that you worked on?

A What do you mean?

Q A stipulation that we had, embodying certain figures?

A No, I have not.

Q Do you have a copy of that?

A No.

Q You saw it?

A Yes, I saw it.

Q And you helped work on it?

A Yes.

Q Will you refer to that (handing paper to witness), and if that refreshes your recollection, state the number of—refer to paragraph 12 of that, and see if you can state from that what percentage of the product is sold in the semi-finished form of pig iron, bars, bil-

lets, skelt, and so forth? The question is, what percentage of your product is sold in a semi-finished state, bars, skelt, billets, and so on? I think that is paragraph 12 if you will look at it.

A I do not know. It varies a great deal, Mr. Reed. There is no definite amount. It depends upon the market conditions. When times are slow, as they have been, we sell more semi-finished in proportion to our product than we do our finished.

Q What percentage of it do you estimate is sold outside of the State of Pennsylvania?

A Of the Allequippa plant in the semi-finished stage?

Q Yes.

A Not over 30 per cent, if that much.

Q What percentage of the finished products at the Alequippa plant do you estimate are ultimately delivered to customers outside the State of Pennsylvania? I believe that is paragraph 14.

A About 75 per cent, we ship outside of the State of Pennsylvania of our finished product.

Q Do you know the average number of railroad cars you used per day at that plant? Paragraph 16, I think, has that.

A I do not seem to have that here.

Q You have not? Paragraph 16.

A On an average of about 1,900 cars are required each month at Alequippa, which we get from the P. & L. E. Railroad.

CHAIRMAN MADDEN: That is for outgoing?

Q (By Mr. Reed) That is for outgoing shipments, is it?

A That is for outgoing shipments.

Q Approximately how many employees do you have at the Alequippa plant?

A Approximately 10,000 under normal conditions.

Q Do you know what the payroll was at the Alequippa plant in 1934?

A For the year 1934 it approximated $9,865,000.

CHAIRMAN MADDEN: Mr. Reed, can the witness tell us how much of their product is this semi-finished and how much is finished? We have these percentages about each one.

MR. REED: I believe he said it was pretty hard to tell, that it varied.

Q (By Mr. Reed) Can you tell us what percentage on the average of your product is sold in the semi-finished state?

A I would say—I am speaking now of the Alequippa plant.

Q Yes, Alequippa.

A About 30 per cent.

Q About 30 per cent?

A That would be the average. That varies, of course, but that would be a good average between a fair run of business and a poor run of business.

Q I see. When you ship on the 1,900 cars that you speak of, that you averaged a month, those cars, I assume, are delivered over to the railroad and you have no control over them after they leave Alequippa?

A I did not get the point.

Q I assume that the railroad over which the cars are shipped, the 1,900 cars a month, is the P. & L. E. and you have no control of the shipments after you send them out?

A We turn them over to the P. & L. E. and they do the rest.

Q The company does own some barges, I believe, does it not, but no steamboats?

A We have barges and steamboats.

Q Does the J. & L. own any steamboats?

A Yes.

Q Is not your transportation done by another cor-

poration? Is your transportation on the river done by another corporation?

A It is the Vesta Coal Company, a subsidiary.

Q That is a subsidiary company?

A Yes, a subsidiary company.

Q They bring your barges down the river from the Vesta?

A Yes, sir.

Q I don't think I asked you anything about scrap iron. How much scrap iron do you use?

A That varies a great deal, Mr. Reed, depending on the type of orders we are producing and the amount of business we are doing.

Q Do you store that? Do you have a scrap pile in the mill?

A We accumulate scrap, but it is largely from our own operations.

Q Do you keep it piled in the mill?

A We keep it piled up in the plant at different places.

MR. REED: You may cross examine.

CROSS EXAMINATION

Q (By Mr. Watts) I show you a blueprint which purports to be an outline of the plant and ask you if that isn't a fair and accurate representation of the plant?

A (After examining) It is not a very good one, but it is fair. I would not say it is accurate, though.

Q You mean that every detail is not there?

A The proportions are not right.

Q But the various units are mentioned there?

A They seem to be pretty well covered, yes.

Furs. j fls.

MR. WATTS: I offer it in evidence.

MR. REED: I do not believe, under the identification that the witness gave, it is proper evidence. It can only be proven by whoever produced it.

MR. WATTS: Here is a man that has had 24 years up in that plant, and if anybody knows what is an accurate representation of the plant, this is the man. He has already said that it is.

CHAIRMAN MADDEN: Why don't you go into it further with him. He did say, of course, that the various units represented on this map are there. Why don't you go into some more detail?

MR. WATTS: If the Board wishes me to do so.

MR. CARMODY: What does the block title down there show? That usually gives authority for the drawing.

MR. WATTS: There isn't one there, sir.

THE WITNESS: It takes an engineer, somebody familiar with blueprints, which I am not, but I just say at a glance that it looks—

MR. WATTS: Let us find out how accurate it is.

Q (By Mr. Watts) You have been up there a quarter of a century, let us say.

A That does not make me an engineer. I can be there all my life and still not be an engineer.

Q I don't say you are an engineer. Do you think that represents the situation?

A I can not read blueprints. If I see that on paper, I just size it up as a fair picture.

Q Is that, according to your recollection, a fairly accurate representation of the river?

A I can not say that it is. You see a river there, but I do not know whether the dimensions are accurate and in proportion.

Q Do you see a railroad there, the P. & L. E.?

A I know where it ought to be but I do not see it. (After examining paper) I see what purports to be a railroad.

Q Is there a railroad there?

A Yes.

MR. CARMODY: Can't we go better with the river on this side? (Turning the blueprint upside down.)

Q (By Mr. Watts) What do you see about that, sir, that you would say is inaccurate?

A I can not say what is inaccurate. I do not know what is accurate.

Q Does this represent—

CHAIRMAN MADDEN: I would suggest, Mr. Watts, that you point it out to him.

MR. WATTS: I am going to start at one end and carry him right down the whole length of the plant, building by building.

CHAIRMAN MADDEN: All right.

Q (By Mr. Watts) Drawing your attention to the right-hand end of Board's Exhibit for identification No. 49, there are represented certain blast furnaces, are there not?

A Yes, sir.

Q Do these accurately set forth the number of those blast furnaces?

A There are five blast furnaces in the plant.

Q And are they arranged in that relative position of one to the other?

A I do not know that, Mr.— what is your name?

Q Watts is my name. You do not know that the blast furnaces stand opposite each other?

A I know that very well.

Q Yes, and that is the way they are represented here?

A You said relative position. I do not know the distance between them.

Q I do not mean the distance between them, but they stand opposite each other?

A Yes, in a row.

Q And that row is between the railroad yard and the river, is it not?

A I believe it is.

Q There is no doubt about it, is there?

A There is a doubt whether the railroad yard is back of the blast furnaces or over towards the town, as it were.

Q Look at that map. Does it refresh your recollection?

A Yes, I would say so. This is the railroad yard here, then the blast furnaces are between the railroad yard, as you call it, and the river.

Q Yes. Now, then, let us look down at these other buildings. Will you just look at all the buildings between the blast furnaces and the river, and without saying whether or not the number of inches is accurate on that scale, are those buildings there at the Alequippa plant?

A I can not identify all of them but the bulk of them appear to be there as they are on the plan.

Q You do not see anything there which purports to be there which you know is not in fact there? You do not mean that?

A No, I do not, because I am not familiar enough—

Q All right. You know about the open hearth and the Bessemer?

A Yes, I would say that.

Q And you know about the blooming mill right here, and the tonnage mill? You know those are there?

A Yes.

Q Then you know the by-products go down there by the river side?

A I do not know the carpenter shop and the electrical stores and things of that kind.

Q All right. Now, moving towards the left on this Board's Exhibit for identification No. 49, you know where the police office is, don't you?

A Yes.

Q Is that accurately set out there in its relative position?

A Where did you show the general office?

Q (Indicating).

A Yes.

Q That is correct, is it?

A Yes.

Q Now, then, getting down to the center of the exhibit, the welded tube push punch mill, is that accurately set up here? I mean, there is such a mill and it is in that approximate part of the plant?

A That is right, there is such a mill. The building is like that.

Q Yes. You understand, I am not asking you whether the number of feet in the length of the building is accurate here, but there is a building of that relative size and shape?

A No size shown but I take it that you mean relatively.

Q That is right. Now, coming still further to the left, do you see represented her a large number of mills of one kind and another? Are those accurately set forth?

A Well, those mills are there but this print is not accurate. I mean, it does not show even the relative positions of them. The mills are in there.

Q The mills are in there?

A The buildings are there.

Q Down at the extreme left end you remember the old coke ovens, don't you?

A Yes.

Q And then the coal storage yard and the ore storage?

A Not the ore; it is coal down there.

Q No ore storage down there?

A No.

Q That is all at the other end, is that it?

A Yes.

Q Do you know how long the property is there?

A I do not. I think it is two and one-half miles but I am not sure of that.

Q Do you know how wide it is?

A I do not. You see, it varies a great deal in its length.

Q You do not mean the length? You mean the width?

A The width varies in the length. You wanted to know how wide it was, and it varies in its length.

MR. WATTS: I renew my offer of the exhibit.

MR. REED: It is objected to. The testimony of the witness is that it is not in that arrangement. Some of those things are not there now. I want to know the date—

MR. WATTS: He is asked about the exhibit as it is. It does not make any difference whether this was made today or two years from today.

Q (By Mr. Watts) Can you make the reference to the mill any more accurate yourself?

MR. REED: That is not the way to prove the plan, to move the mill.

MR. WATTS: I am going to show the way the plant works.

THE WITNESS: I am not artist enough to do it.

Q (By Mr. Watts) Can you make that any more accurate, sir?

CHAIRMAN MADDEN: I don't think—

THE WITNESS: They are not accurate but I am not the one who can correct it. I am not familiar enough with sketches to show you what you want.

CHAIRMAN MADDEN: Will you explain, Mr. Jamieson, wherein it is not accurate?

THE WITNESS: If I could just show this gentleman here—

Q (By Mr. Watts) We have got to get this on the record. Somebody has to read what you say.

A We have here a diagram marked round mill, another diagram marked seamless. They are entirely out of proportion. That is what I had in mind.

Q Are they too large or too small on this representation?

A The round mill building is too small compared with the seamless mill building. The seamless mill building is many times the size of the round mill building.

Q All right. Let us go on.

EXAMINATION BY CHAIRMAN MADDEN

Q (By Chairman Madden) Is that the sort of inaccuracy that you see in the chart; that is inaccuracy of proportion?

A Yes, sir.

Q What would you say about the general location of these various mills and other units?

A I think it is a fair representation of the lay-out.

Q As to general location?

A Yes, sir.

Q And as to the existence of these various units; not as to their particular size, but as to the fact that they are there?

A Yes.

Q You think it is accurate in that respect?

A Yes, sir.

MR. WATTS: I renew the offer.

CHAIRMAN MADDEN: I think it may be admitted.

(The blueprint referred to was received in evidence and marked "Board's Exhibit No. 49", the exhibit being later withdrawn and Board's Exhibit No. 50 being substituted therefor.)

MR. CARMODY: I am satisfied there is in existence an up-to-date plan showing the location of these

buildings, but with a great deal more detail with reference to their lines and all that sort of thing. If it is important, I expect the respondent company would be glad to submit it.

MR. WATTS: Request was made for such blueprint and it was not available.

MR. REED: No such request was made. I do not know what it is about. It is offered as a diagram of the mill. There are hundreds of diagrams of the mill. Why does this one have to come through the back door and be identified in proportion, which is not the correct way, and then become the map in evidence?

MR. WATTS: Your firm was asked for a map of this mill and your firm did not produce one. Because of that failure this is being used.

MR. REED: Who, at the mill?

MR. WATTS: Mr. Bostwick.

MR. REED: I do not know anything about that.

MR. WATTS: Don't say on the record that no such request was made.

MR. REED: I do say it. It was not made of me.

MR. WATTS: I do not say it was made of you.

CHAIRMAN MADDEN: Gentlemen, stop this argument right away. Do you have a map, Mr. Reed?

MR. REED: I assume we have. I believe we have.

CHAIRMAN MADDEN: Mr. Watts, I will ask you to withdraw this until after the noon recess.

MR. WATTS: Withdraw what?

CHAIRMAN MADDEN: Withdraw this offer until after the noon recess, and if a map accurate in all respects can be produced, we want it. If not, we will use this.

MR. WATTS: I shall be glad to do so. I was proceeding on the assumption which I have indicated.

(The blueprint referred to was thereupon remarked "Board's Exhibit No. 49", for identification.)

DIRECT EXAMINATION (Continued)

Q (By Mr. Watts) Where does the ore come from that you use at the Alequippa works?

A Michigan largely—mostly.

Q And the company through subsidiaries holds very large acreages of ore containing properties up there, does it not?

A I do not know.

Q You do not know about that? Have you read—

A I do not know whether it is very large.

Q Have you read the recent registration statement of the corporation with the Securities and Exchange Commission?

A I have read some of it.

MR. WATTS: May I have that, please, if the Board still has it up there?

(The paper referred to was handed to Mr. Watts by Chairman Madden.)

CHAIRMAN MADDEN: Mr. Reed, will you have other witnesses who will know about matters of this kind?

MR. REED: As to the ore? Yes, I think so.

CHAIRMAN MADDEN: What?

MR. REED: We can give him the information, the extent of the ore holdings.

CHAIRMAN MADDEN: Mr. Watts, I do not see how it is useful to go into that with this witness.

MR. WATTS: You see, I do not know what witnesses the other side is going to put on, sir. I have a witness who has been testifying he has been there 24 years and I want to bring out from him as much as I can.

CHAIRMAN MADDEN: His work has been with the order department, I understood.

MR. WATTS: He has been testifying here as to the sources of ore and materials of the company. That

is what the whole offer has been and I am entitled to cross examine him on that.

CHAIRMAN MADDEN: His testimony on that is not much more significant than everyone knows about the operation of a steel mill. He did not know how much and where it came from. Let us get the best evidence we can on these things.

MR. WATTS: I do not select the company's witnesses, or I could perhaps make a better selection.

Q (By Mr. Watts) All of the ore obtained by the company comes into the Alequippa works by railroad, does it not?

A Yes, sir.

Q Can you state to us how many cars, average per month, of ore comes into Alequippa?

A No, sir.

Q You do not know that?

A No.

Q Is it a very large number?

A I do not know whether is is a large number—what you would call a large number.

Q You did not look into that when you were getting the statistics of the cars outbound?

A I got the cars outbound.

Q But not the other?

A No.

Q Now, the ore is transported across the Great Lakes, is it not?

A Yes, sir.

Q And by whom is that transportation done, a subsidiary of the respondent?

A It is done, I think, by people that bring it down for us, outside.

Q Outside, you think?

A There may be some in our own boats. I guess there is. I do not know what the proportion is.

Q I see. Now, then, at the Alequippa works them-

selves you have a railroad known as the Alequippa & Southern Railroad, have you not?

A Yes, sir.

Q Do you know anything about that railroad, how many cars it owns and operates?

A I do not.

Q Can you tell us where the trackage of that railroad is?

A What is that?

Q Where the tracks are?

A It is in the plant and around the plant, that is all; inside the works.

Q In other words, the trackage of that road is in that area of land between the Ohio River and the P. & L. E. Railroad, where the Alequippa works are located, is that right?

A I do not know whether it is entirely in there.

Q But the bulk of it, you would say?

A Yes, the bulk of it.

Q Now, those tracks go widely throughout the entire plant, do they not?

A Yes, sir.

Q Right inside the various buildings?

A Yes, sir.

Q As well as outside?

A Yes.

Q And they also connect with the P. & L. E. tracks, do they not?

A They do.

Q Is it the fact that all of the loading of cars is done while the car is in control of the Alequippa & Southern Railroad?

A I think so.

Q They go to the P. & L. E. tracks and get an empty car and bring it down to the plant, do they not?

A That is practically what happens. I do not know what the operation is.

Q And there whatever goes in it is put in it and the railroad moves the car away on its journey to the P. & L. E. Railroad and thence to the customer, is that right?

A I think that is right.

Q Of course, there are a number of employees of the respondent engaged in operating this Alequippa & Southern Railroad, are there not?

A There are, yes, sir.

Q Engineers, firemen, breakemen, switchmen, and all that sort of thing?

A They work for the A. & S.

Q Yes, they work for the Alequippa & Southern. Now, in general, the process followed at the Alequippa works is a continuous process, is it not?

A Yes, sir.

Q With the exception of such material as is sold or stored in the course of the process?

A But I would say the operation is a continuous process.

Q Yes. And in the handling of materials as they travel through the plant from one department to another, you have what manner of handling, what mechanical handling is done?

A It is by rail and cranes.

Q You have a great many electric cranes, have you not?

A Yes.

Q So that these cranes not only control the flow of material from one department to the next department, but if that material was sold at one given point the crane men would load it into a railroad car at that point, isn't that right?

A That is right.

Q Barges come up there on the river and are loaded and unloaded also by electric cranes, are they not?

A No, that is a little different operation.

Q They have got an overhead crane down there in the coal pits, have they not?

A They have locomotive cranes for the coal.

Q Locomotive cranes?

A Yes.

Q Those are operated by the men working on the A. & S., is that right?

A I will not say that because I do not know.

Q Now, then, each department of the mill, of the many departments of the mill, also has its own shipping department, does it not?

A Yes, sir.

Q That is the thing you head up, is it, the various shipping departments?

A Yes, sir.

Q And the shipping departments in each of the several departments of the mill get out the material which is going from their department, see to its loading and see to the carrying out of the orders, is that right?

A Yes, sir.

Q Those shipping departments have laborers, do they not, to assist in the handling of goods which are being placed on cars ready for shipment?

A Yes, sir.

Q Now, whatever the quantity of incoming ore shipments may be, what percentage would you say originates outside of Pennsylvania?

A Of the ore? I would say all of it.

Q All of it?

A As far as I know.

Q Then we get over into the process which you described as the first stage, and it is in the first stage, I take it, where are produced pigs, ingots, and sheets, is that right? Or do you stop with the pig on the first stage?

A I told you that we considered the making of the iron ore, the pig iron, either cast into pigs, or in the molten condition, as the beginning of the steel manufacture in our plant.

Q That was your first stage at the end of the pig making, the molten iron?

A We go through that to the semi-finished stage.

Q What would be in the semi-finished stage?

A Where we make the ingots and roll them into billets, sheet bars, blooms, and slabs or skelt.

Q Yes.

A They are all semi-finished.

Q Yes, thank you. Now, it is that material, up that far in the process, which you testified before was sold, about 30 per cent, without further use by the company, is that right?

A Yes, sir.

Q When those various articles which you have just described as semi-finished, are sold, they go, do they not, to a multitude of other companies engaged in all sorts of manufacturing and other processes, is that right?

A They go to a variety of concerns.

Q And those concerns are scattered all over the country?

A Well—

Q Certainly not all in Pennsylvania?

A No, it goes outside the State, if that is what you mean.

Q That is what I mean. Now, then, do the various customers who buy semi-finished products of the respondent product, those semi-finished products represent the things upon which their operation begins? That is their raw material, is it not?

A Right.

Q And if the customer's raw material supply was

shut off, of course he could not carry on his operation, could he?

A Well, not necessarily. He could go to somebody else and get it.

Q True, but I say if it was shut off he could not carry on?

A Sure; if it was shut off he would be out of luck.

Q Now, in so far as those customers give orders to the Alequippa plant, they are dependent upon the Alequippa plant for continuing an uninterrupted operation to supply them?

A They expect that.

Q Yes.

A Yes, they expect that.

CHAIRMAN MADDEN: I wish you would ask what some of those are.

MR. WATTS: I am going into that in just a minute.

Q (By Mr. Watts) Among the various users of semi-finished articles, can you name some of the more important? I do not mean the company name, I mean the thing they do with the semi-finished product.

A Well, the concerns that buy sheet bars, buy them for making sheets, various types of steel sheets. A large part of it goes into the production of automobiles. Others buy billets or rods which they use for finishing into wire and wire products. Others buy skelp which is used for making pipe, welded pipe, and, of course, others buy plates, angles, and flats which are used for fabricating into machinery or buildings.

Q In other words, there are many mills which do not have blast furnaces?

A Yes.

Q But which do have rolling facilities, is that right?

A Yes, there are.

Q And it would be mills like that which would

create a demand for these products which you are just mentioning, some of them?

A Yes.

Q Now, are sales and deliveries made from the Alequippa plant of semi-finished goods directly to any of the automobile companies?

A No.

Q There is always that intermediate stage of some other processor when you sell the goods in semi-finished form, is that right?

A There is one exception. The Ford Motor Company, having their own steel works and rolling mills, sometimes buy semi-finished material from other mills.

Q Yes?

A And we have shipped some semi-finished to the Ford Motor Company. That is rather exceptional, I will admit.

Q Yes. When you mentioned before that a great many sheets ultimately went to the automobile industry, you meant as it passed through another mill next for processing?

A Yes, sir.

Q Now, when you get over into the second stage, as you term it, you, of course, have your products in various stages of processing to a greater or less degree. Now, is it during that second stage that the respondent company sells from its Alequippa works materials directly to the automobile manufacturers?

A Yes.

Q And can you tell us anything about the percentage of your automobile sales as to any other principal sales?

A No, I can not.

Q Is it very large?

A Not with us, not with J. & L. the automobile business is not as important to us as with many other steel producers.

Q What about railroads as purchasers?

A Under normal conditions we would furnish a heavy tonnage, a comparatively heavy tonnage of steel to the railroads and car builders and other people producing supplies for the railroads.

Q And, then, finally, through your fabricating plant you also would furnish material for bridge building, I assume, and that sort of thing?

A You mean through our customer fabricating plant?

Q Yes, or through your own, for that matter?

A Yes, sir; that is a very small one.

Q You do have it, however?

A We do have one plant.

Q One on Long Island, for instance, is there not?

A Pardon me?

Q One on Long Island, New York?

A That is a warehouse.

Q That is not a fabricating plant?

A In a very small way. That is just a recent acquisition.

Q Do you have a fabricating plant in New Orleans?

A We have one there, that is right.

Q Can you tell us whether or not there is shipped by water any semi-finished products?

A Yes.

Q Where do those go, chiefly?

A It practically all goes to Parkersburg, West Virginia.

Q Do you have a warehouse there?

A No.

Q What happens to it?

A We have a customer who buys sheet bars for making sheets.

Q Are there other points on the river to which considerable deliveries are made?

A Not in semi-finished.

Q But in the second stage you would have other points of delivery down the river, is that right?

A That is right.

Q Can you think of the principal ones, offhand?

A Well, Memphis is the main one.

Q Yes?

A We also ship to Cincinnati, Louisville, and New Orleans.

Q I see. By the way, is it ordinarily true that when you ship by water, say, to Memphis, the goods stay in that area, or are they picked up by rail and further distributed?

A They are taken off at Memphis and transshipped as they are wanted by rail.

Q I see, from a warehouse?

A No, to the consumers.

Q From a warehouse? Do you have a warehouse?

A From the warehouse, yes.

Q As a matter of fact, sir, could we say with reasonable accuracy that semi-finished goods have no commercial use as such, they have to be further processed?

A That is right.

Q Now, the storage of coal and ore which you have referred to at the Alequippa plant, I take it, is basically because of the seasonal situation on the Great Lakes and on the river, is it not?

A In the case of ore it is a seasonal operation.

Q And in the case of coal, not so much so?

A In the case of coal, not so much so.

Q And therefore, during the summer months you get a very heavy incoming ore traffic and in the winter months it goes off because of the condition of the Lakes, is that right?

A That is right.

Q The limestone which you get you have described as coming from West Virginia, did you not?

A Yes.

Q And you also get some from Ohio?

A I am not competent to say.

Q You have a much smaller quantity of that on hand?

A In tonnage, yes, there is a smaller quantity.

Q If you will look at paragraph 8 on page 3, at the very end of the page, the statement appears that there is a sufficient quantity to last two weeks. Is that a fair estimate?

A That is a fair figure, a fair estimate.

Q Of course, you can not make pig iron without limestone, can you?

A Not very well.

Q It would funny pig iron, would it not?

A Yes.

Q So that your process of operation of the blast furnaces is dependent upon how large a supply you have of every element that enters into the making of pig?

A Yes, sir.

Q And you could hold out at the moment for about two weeks because you have a two weeks supply of limestone if a wheel were not turning around the plant and you could not get in anything?

A That is right.

Q If you did assume a situation where nothing was coming into the plant, the affect of that would be very important upon the railroads, would it not?

A Yes, sir.

Q If you also assumed a situation where you were not shipping out anything, the effect would be equally bad on the railroads?

A We would lose a lot of business.

Q Yes. As a matter of fact, what would your opinion be as to the affect, as to whether there would be any affect on commerce among the various States if

the Aliquippa plant were shut down? Would it decrease such commerce?

A I could not say about that. I am only thinking of the customer, the man that we serve.

Q That is right.

A He would be disappointed; he would not go out of business, but he would just place his orders with one of our competitors.

Q What about the railroads?

A The railroads would lose the tonnage we had shipped over them before; there would be a loss to the railroads.

Q I am not talking about any kind of loss; I am talking about whether there would be any affect.

A I would not say there would be any national affect, if that is what you mean.

Q You can see, can you, an effect on the freight traffic of the P. & L. E. Railroad if the plant did not operate?

A Yes, sir.

Q All right.

A They would lose business.

MR. WATTS: That is all, thank you.

MR. REED: That is all, Mr. Jamieson.

CHAIRMAN MADDEN: I would like to ask a few questions.

EXAMINATION BY CHAIRMAN MADDEN

Q (By Chairman Madden) What is the rank of the Jones & Laughlin Company in the steel industry?

A You mean as to size?

Q Yes.

A I think we are now fourth.

Q Would you name the ones that rank above it?

A There is the United States Steel Corporation, Bethlehem Steel Corporation, and the Republic Steel

Corporation. I think Jones & Laughlin come in at that point.

Q How many steel companies are there? Do you remember what the number is?

A Well, there are listed as steel producers something like 25, I believe.

Q 25?

A Yes, large and small.

Q Is the Alequippa plant the largest plant of J. & L.?

A No, the Pittsburgh works have a larger capacity for making steel.

Q How many employees are there there?

A I do not think there are quite as many under recent conditions as there are down at Alequippa. I would say there are between 8,000 and 9,000 at the Pittsburgh works.

Q It has a somewhat larger capacity, you say?

A Pardon me?

Q The Pittsburgh works has a somewhat larger capacity?

A A larger plant.

Q Do you know of any shipper over the P. & L. E. Railroad that ship more tonnage than you do?

A Pardon me?

Q Do you know of any other shipper over the P. & L. E. Railroad that gives them more tonnage than you do?

A I do not know of any other shipper.

Q Would it be your opinion that you are the largest shipper over the P. & L. E. Railroad?

A Yes, sir. That is my own opinion.

CHAIRMAN MADDEN: I think that is all.

MR. WATTS: I have just one other thing, if I may.

CROSS EXAMINATION (Continued)

Q (By Mr. Watts) Would you look again at that

paper, page 8, and at the beginning of paragraph 16 read to yourself that paragraph, and paragraph 17, and tell me whether or not that is accurate, and, if so, I am going to ask you just to read it to the stenographer. Just read 16 and 17 and see if they are accurate; and, if they are, will you please read them to the stenographer so he can take them down?

MR. REED: I object to that. We prepared a stipulation in response to a questionnaire of Mr. Watts'. Now he does not want to use, but he wants to use parts of it. He will have to ask the witness questions if he is going to use the stipulation.

MR. WATTS: I will be glad to ask the witness questions if that is objected to.

CHAIRMAN MADDEN: You might ask the question, "Will you read this paragraph?"

Q (By Mr. Watts) Will you please read the paragraphs to yourself? Are the statements contained in those paragraphs accurate, to the best of your knowledge?

A To the best of my knowledge they are accurate.

Q I ask you to read them into the record.

CHAIRMAN MADDEN: I think it will save questions and answers. Of course, all this can be brought out by asking the specific questions.

MR. REED: All right.

CHAIRMAN MADDEN: Just let him do it to save time. Go ahead.

THE WITNESS: Shall I read it?

CHAIRMAN MADDEN: Yes.

THE WITNESS: (Reading)

> "The respondent has heretofore stated that it receiped a very substantial portion of its raw materials from rail carriers and likewise shipped a very substantial percentage of its finished products by rail. Inbound shipments by rail are delivered

to the respondent by the P. & L. E. Railroad Company while outbound shipments are delivered to the same carrier.

"During the year 1934 the respondent paid to railroads the sum of $2,876,024.54 for outbound freight charges, and in the year 1935, $2,168,178.29. Approximately 75 per cent of these payments were attributable to charges for shipments to customers outside of the State of Pennsylvania.

"On an average the respondent obtained 1,900 cars from the Pittsburgh and Lake Erie each month.

"During the year 1934 the respondent's sales amounted to approximately 564,836 net tons, and in the year 1935, 831,326 net tons. The dollar value of business for said years amounted to $29,618,758.35, and $38,831,757 respectively."

Q (By Mr. Watts) Thank you. Are the 1936 volume figures showing an increase or decrease over 1935 or 1934, if you know?

A They are running 20 per cent less, the activities for the first part of this year.

MR. WATTS: Thank you.

REDIRECT EXAMINATION

Q (By Mr. Reed) Is the rest of the stipulation accurate also? You read certain paragraphs, is the rest of it accurate? You read certain paragraphs at the request of Mr. Watts, and is the rest of the stipulation accurate also?

A Yes, sir.

Q Will you read the rest of it? I mean the whole stipulation.

MR. WATTS: I have no objection to it; I simply do not wish to stipulate with counsel some of the con-

clusions he has in there. If he wants his witness to testify to them, I reserve my right to cross examine. That is the only difference.

MR. REED: I have a right to have the whole thing.

MR. WATTS: You have a right to have him say anything you want to.

MR. REED: All right, then, I ask him—

CHAIRMAN MADDEN: If this witness is willing to testify to everything that is in that, we can simply hand it to the reporter and have him write it in, but it would be subject, of course, to cross examination. Are you read to cross examine?

MR. WATTS: I object, if the Board please, to so much of the proposed testimony as consists of conclusions, and there are a great many such conclusions in this document. I very vigorously object to those going in, even in the form of direct testimony.

MR. REED: Then you could point out what are the conclusions.

MR. WATTS: I am prepared to do so. I can not do it if you offer the document in evidence here. It is nine pages long.

CHAIRMAN MADDEN: I suppose that is true, Mr. Reed, if you have this witness stating conclusions with reference to interstate commerce and matters like that.

MR. REED: A great many of the documents that are in evidence are somebody else's conclusions entirely. Now, this is one of the officers of the company and there is nothing here—they call the process manufacturing, and there are no other conclusions expressed in this stipulation.

MR. WATTS: That is very material.

CHAIRMAN MADDEN: You gentlemen, of course, have the advantage of us. You know what is in here and apparently Mr. Watts does, but I do not.

MR. REED: Maybe it would be well if you would

take a copy of this and we can consider it after adjournment. That is satisfactory to me.

CHAIRMAN MADDEN: We will recess until a quarter before two.

(Whereupon, at 12:35 o'clock p.m., a recess was taken until 1:45 o'clock p.m., of the same day.)

Gall. fls.
Gall fls. Furs. ce

AFTER RECESS

The proceedings were resumed at 1:45 o'clock p. m.

F. E. JAMIESON, resumed the stand and testified further, as follows:

MR. REED: We offer the paragraphs that were not read by the witness; that is, paragraphs 1 to 15, inclusive, and paragraph 18, as a statement of the witness, without the necessity of reading it into the record, unless you wish it.

MR. WATTS: If the Board please, let me make my position clear.

There are contained in these various paragraphs a considerable number of pure statements of fact. I have no objection to those statements of fact. My objection is directed to the portions of the paragraphs in which conclusions are set forth or in which the witness' ideas as to the effect of those facts are set forth. I do seriously object to those portions of the paragraphs.

As the character of statement to which I have no objection, I would direct the Board's attention to paragraph 5, which is a straight-forward statement of raw materials used in the plant. As an example of the type to which I object, I would refer to paragraph 2, "for the purpose of manufacture and production of said iron and steel products, the respondent owns".

This witness has already testified as to what they had there at the works, and I submit it is improper for him to denominate what those things are, whether they are manufacture or whether they are not, within the legal meaning of that phrase.

MR. REED: There is no doubt that they do produce steel. That is a statement of fact. That is not a conclusion. Whether or not that is "manufacture" within the legal meaning is another question.

CHAIRMAN MADDEN: I do not see how you could draw that distinction. In the recent public, as well as judicial discussions of these things, of course, a good deal of legal inference has been hung upon words, which, up until recent times, we thought of rather as fact words instead of law words. We have been advised, through briefs and otherwise, that "manufacture" is not commerce, and that is that. It is "manufacture".

MR. REED: It does not say "commerce" here. It says "manufacture and production of iron and steel products".

CHAIRMAN MADDEN: Yes, but do you not see what I mean, that if the thing is denominated by this magic word in that manner, that legal inferences are drawn from it, so it makes the word a sort of legal conclusion, and it ought to make all of us very careful that the word is used accurately.

MR. REED: If the witness were to answer a question, he would be entitled to say what they did in the way of manufacturing the steel products here.

CHAIRMAN MADDEN: I think the whole course of having a witness who is on the stand testify by handing up a written statement, rather than by oral testimony, is somewhat irregular.

MR. REED: I objected to it when it was first done, if you will recall, and he was permitted to read

two paragraphs, and I am suggesting that he read it all.

MR. WATTS: I have no objection to reading the paragraphs of similar nature, which are pure statements of fact, without the presence of any ambiguous terms or limitations.

CHAIRMAN MADDEN: I would suggest, Mr. Reed, in spite of the fact that it would take longer to do it, you ask the witness whatever questions you want, and then we can handle these things one at a time.

MR. REED: I understand that the offer of this as a statement or as an offer of the witness to read it, will not be permitted?

CHAIRMAN MADDEN: Yes.

THE WITNESS: "It is hereby stipulated"——

MR. REED: No; I did not request you to read it. You are not permitted to read it.

THE WITNESS: Thank you.

MR. REED: That is all.

MR. CARMODY: One moment, please. If these lawyers will leave you and me alone for two or three minutes, we will talk about this part of this business that you probably know a lot about. I mean the order business and the shipping business.

Q (By Mr. Carmody) I take it from the respondent's answer that all of your products are delivered to the customer on the cars, and then you do no more about them; is that true?

A True.

Q You do not have any follow-up system or any expediter or anybody in your office who follows up the railroad company to find out when they are going to deliver a certain car at your Memphis warehouse, for instance?

A Yes; we do.

Q Of course, you do. It would be a funny steel company if you did not have to do that. You do not

let go of the shipment until it lands at the warehouse, at the customer's place, do you?

A Yes. I would like to make this statement in that respect—

Q Yes.

A We are interested in having the shipments delivered to the customer by a certain time. For that purpose, we have certain men in the company who follow the shipments through the railroad to destination. It is only a small number of cars that go out that way, that are followed through. The rest of them we have nothing to do with after they leave the plant.

Q It is an important job, however?

A Oh, yes.

Q I think the respondent has said somewhere in its answer that you manufacture for the customer?

A Yes.

Q Now, how much material that goes to your Memphis warehouse, for instance, goes for a customer other than J & L?

A Well my answer to that would be practically none.

Q Well, as a matter of fact—

A It goes there for storage.

Q That is it, and, as a matter of fact, the warehouses are distributing centers, and you ship from the mills to yourselves at the warehouse for delivery to customers, who order through the warehouse and not through the mill?

A That is right.

Q Now, if a special order came in for any kind of steel; I mean one kind—shapes, perhaps, some forgings, perhaps some billets, or any of the usual products of the mill, to be delivered as promptly as possible, how long would it take you to get out, say, twenty tons or thirty tons from the time the molten pig was poured into the open hearth furnace, until you could ship it,

approximately? I know it will differ with different things.

A You want an average?

Q Yes.

A One week.

Q One week?

A Yes.

Q As a matter of fact, your operations at Aliquippa are based largely on the use of molten pig?

A Yes, sir.

Q So that when the pig iron is made, it has to be processed as quickly as possible?

A That is right.

Q Do you make any tool steel at Aliquippa?

A No.

Q No tool steel?

A No.

Q No special alloy steel of that kind?

A No, sir; no alloy steel.

Q In your best judgment, based on 24 years' association with the company and a long time in charge of orders, how much steel do you think is used directly by the customer to whom it is shipped without any other processes, except spikes, ties plates and light rails?

A I just don't grasp the idea of the question.

Q My point is this: There has been some inference in the testimony here that the product is ready for use when it leaves the mill, by the customer, by the man who buys it. Now, my point is, if I know anything about the steel business at all, that practically none of it is used by the man that buys it from the mill without processing it for himself or somebody else?

A That is true when you ship to fabricators.

Q Yes

A Understand, some shipments goes to warehouses.

Q Yes

A Who have nothing to do with it except to sell it.

Q What happens to the steel after it leaves the warehouse is what happens to the steel when it goes directly to the customer. That happens to be just the storage point. You see, this whole warehouse development is comparatively new in the steel business, that is, on a large scale. You know that better than I do, because you know that the president of your company got his training with the largest warehouse company of that time, when he came over?

A That is right.

Q And your warehouses started, as you know, when Mr. Hackett came to J & L?

A Yes.

Q And he brought these other men with him?

A There is one point about this steel that goes out. That really goes into the field. There is really no need to have processing done on that.

Q That is pipe for oil lines?

A Oil lines.

Q What is the largest diameter pipe that you make?

A In lateral 16 inches and sometimes 14 inches, o. d. That is outside diameter.

Q The point in the field; pieces of pipe are of no value, and there is welding in the field?

A That is true of line pipe. On casing drill pipe, to some extent, and tubing, it goes out all ready to use.

Q Are the threads on it?

A The threads are on it.

Q All threaded ready to go?

A Yes. Line pipe goes out ready for welding in the field—most of it.

MR. CARMODY: That is all. Thank you very much.

(Witness excused.)

MR. REED: Mr. Gottschalk.

C. W. GOTTSCHALK, called as a witness for the respondent, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Reed) What is your occupation, Mr. Gottschalk?

A Assistant traffic manager.

Q How long have you been with Jones & Laughlin?

A Over twenty years.

Q Is it your job to know the shipping done by J & L, the shipments received and the quantities of material on hand, and that sort of thing?

A In a general way; yes.

Q In the testimony given by Mr. Jamieson as to a matter particularly in your charge, I believe you called my attention to some of it as not being correct.

A Yes, Mr. Reed.

Q What was that?

A Mr. Jamieson, among other things, said that Jones & Laughlin operate both barges and tow boats. That is correct insofar as barges is concerned, but it is not correct insofar as tow boats are concerned. The Steel Corporation does not operate any tow boats. The towing of the barges loaded by the steel company are owned and operated by the Vesta Coal Company.

Q That is a subsidiary corporation?

A Yes, sir.

Q What percentage of your barges are towed by the Vessels of the Vesta Coal Company, and what percentage are towed by outside towing companies?

A The percentage of towing performed by outside towing companies, I would say, would be less than 10 per cent.

Q That is, you mean that 90 per cent of the barges would be towed—

A 99 per cent of the barges would be towed by the boats operated by the Vesta Coal Company.

Q How long a supply, let us says in months or weeks or days, of coal is there normally on hand at the Aliquippa plant? How long could you run merely with the coal on hand?

A Two to three months.

Q What about the ore?

A Approximately nine months' supply.

Q So that the mill could run that length of time, as far as the ore requirements are concerned, normally?

A Yes, sir.

CHAIRMAN MADDEN: Would that be true, sir, just before the lake shipping season opens in the spring?

THE WITNESS: I think I can best answer that question by replying that at the first of the year we had approximately 10 months' supply of ore on hand at Aliquippa, based on December consumption. I think that should be qualified, for the reason that the rate of operations, of course, would cause that tonnage to be reduced, if the rate of operation was greater, but based on December's opera ions, the first of the year we had approximately 10 months of ore supply at Aliquippa.

CHAIRMAN MADDEN: Why do you do that, if you know?

THE WITNESS: Well, the lake season, for example, extends—

CHAIRMAN MADDEN: I understand about the lake season, that you would have to have enough ore in the fall before the lake shipping closed to carry you through until it opens, and sometimes beyond that; but that is not 10 months, is it?

THE WITNESS: The closed season?

CHAIRMAN MADDEN: Yes.

THE WITNESS: It extends from about November 30th to the first of April.

CHAIRMAN MADDEN: Why do you carry 10 months' supply?

THE WITNESS: In anticipation of better business. In other words, last year in anticipation of good business, the ore requirements were increased several times. That is, in the spring when the figures were determined upon with regard to the volume of ore that was brought down, they were increased several times during the year, because it seemed very likely that our consumption after the close of navigation would be greater than we had anticipated would be in the initial figures, when they were set up early in the spring.

CHAIRMAN MADDEN: Then, you do not build up stacks of ore based upon the expectation that they are to constitute a ten months' supply, as you hope to use them much sooner than that; do you not?

THE WITNESS: I would like to have your question repeated, please.

CHAIRMAN MADDEN: My question is as to why you build up a pile of ore sufficient for a ten months' supply, and I understand you to say that the reason you have such big piles is because that business has not been as good as you anticipated?

THE WITNESS: That is all.

CHAIRMAN MADDEN: That you expected better business last year, and built ore piles on that basis?

THE WITNESS: I might explain that business in the third quarter was better than it was in the second quarter; business in the second quarter was better than it was in the first quarter, and based on anticipated requirements, the ore program was increased, with the result that at the first of the year we had a ten months' supply on hand.

CHAIRMAN MADDEN: So that you are not there stating that it is a business practice to keep ten months' supply on hand; you are simply stating what was a fact at the first of the year 1936?

THE WITNESS: Yes. I would say that the volume of ore carried is determined from time to time as conditions suggest the advisibility, as predicated on the business outlook.

MR. CARMODY: Let me ask you this question right there: Who determines that ore policy?

THE WITNESS: The ore department.

Q (By Mr. Carmody) You had nothing to do with that policy?

A No; I have nothing to do with it whatsoever.

MR. CARMODY: All right.

Q (By Mr. Reed) What percentage of your shipping on the Great Lakes is handled by boats of subsidiaries and what part by outside carriers?

A Approximately 25 per cent by boats operated by subsidiaries, and the balance by outside carriers.

MR. REED: That is all I have.

CROSS EXAMINATION

Q (By Mr. Watts) The Vesta Corporation to which you referred is wholly owned by the respondent corporation, is it not?

A As far as I know.

Q Well, do you know or don't you know?

A I don't know definitely.

Q Are you aware of the fact that the Vesta Company, on December 31, 1935, owned and operated in the service of the respondent company ten tow boats and 165 steel barges and marine ways.

A I am not at all familiar with the number of barges operated by the Vesta Company, because they are essentially in the coal business.

Q You know, I suppose, that the Aliquippa Southern Railroad owns and operates 19 locomotives and 614 freight cars.

A I could not verify the number.

Q Do you know that it operates 43.20 miles of standard gauge track?

A That has been my observation from the notice in the Official Railway Guide.

Q That connects the Aliquippa works with the New York Central System.

A With the Pittsburgh and Lake Erie. It is part of the New York Central System.

Q On the Great Lakes, the ore steamships are handled by the Interstate Steamship Company, are they not?

A That is my understanding. I have no connection with the Interstate Steamship Company.

Q And the Interstate Steamship Company is wholly owned by the respondent, is it not?

A I don't know that definitely, not having any connection with it or having access to the records of the corporation.

Q Do you know how many ships it operates?

A I don't know that definitely, but I believe it is five.

Q Do you know what the monthly average incoming cars laden with ore would be?

A I do not.

Q You are an officer of the company who attends these regional carload conferences, are you not?

A Usually.

Q And those are estimates of the car requirements, which are required upon the basis of information available in several regions, are they not?

A That is my understanding. I have attended meetings when such figures were given, but from the facts in the case they did not mean anything.

Q They represent, however, the best possible forecast of the industry as to its car loadings, do they not?

A Well, I don't know, for the reason that some people are more optimistic than others. Those forecasts are usually made in advance of the quarterly period, and to a very large extent, those figures are predicated upon optimism.

Q That would be true, of course, of the figures set forth in the carload schedules as to the preceding year. That would be history as distinguished from optimism?

A Those figures are supposed to represent the business that actually moved. Whether the companies are supplying the figures of their actual business is another question. The information is sent in in such a way that the papers are not signed. The form sent by the Association of American Railroads is in the form of a questionnaire, with all the commodities listed, and those various concerns are requested to indicate their forecast for the following quarter as compared with the actual business they all did in the previous quarter, or in the same quarter of the previous year. Those questionnaires, however, are not signed.

Q I understand.

A And you can draw your own conclusions as to the accuracy of such statements.

Q Then, what is the purpose of having such meetings?

A To get a general idea as to what car requirements might be over the following quarter.

Q (By Chairman Madden) You do not mean that they would inaccurately state what happened last year because they were not going to sign it; would you?

A I would not care to make that inference. I do not make that inference.

Q You do not rely very much on the figures, either?

A I do not, because I have attended a number of these meetings, and they have been so far away from the actual facts in the case by later developments that I do not place a great deal of——

Q (By Mr. Watts) You heard the testimony read by the preceding witness as to the amount of money paid to the railroads and as to the car requirements; did you?

A I did.

Q Is that accurate, as far as you know?

A As far as I know, those figures are correct.

Q And you have no dispute with that portion of the business?

A I do not.

CHAIRMAN MADDEN: May I ask this question there: Those are the amounts actually paid by J & L to the railroad. Do any shipments go out from your plant f. o. b. or freight collect?

A On the collect basis; yes, sir.

Q (By Chairman Madden) So that such shipments would be in addition to the figures which were given here?

A In the case of collect shipments, of course, the freight would be paid by the consignee.

Q And those amounts, although that business actually went to the railroads from J & L would not show in these figures here?

A They would not be reflected in these figures.

Q How would they compare with these figures? Would they be as much?

A I do not feel qualified to answer that question.

Q Well, if you have any judgment at all, we would be glad to have it.

A I do not believe I have. Destinations, of course, to a very large extent, determine the amount

of the charges, and during one period your percentage of shipments to distant points may be greater than during another period. That would be a most difficult estimate to give.

Q (By Mr. Watts) I would like to ask you, Mr. Gottschalk, whether or not these figures as to the amounts of money paid to the railroads are sums paid for shipments from both the Pittsburgh works and the Aliquippa works, or are they confined to the Aliquippa works?

A These figures are confined to the Aliquippa works.

Q I just wanted to make sure that I understood the figures, and that is true of both of those paragraphs, 16 and 17? I will ask you to look and verify that so there will not be any mistake about it (handing a document to the witness). Look down through paragraph 17.

A Representing the business of the Aliquippa plant.

Q So that there will be no question about it, that was paragraph 16 and paragraph 17, which Mr. Jamieson read into the record beginning with the words "The respondent, as heretofore stated, receives a very substantial portion of its raw materials" and ending with the words "the dollar value of business for such years amounting to $29,618,758.35".

A Where is that figure, please?

Q And "$38,831,757, respectively."

A That is correct.

Q Would your judgment coincide also to the effect that the current figures for this year are more or less on the level of the 1935 figures, as distinguished from 1934?

A Predicated on the business to date, I believe that would be a good measure of comparison.

Q Yes.

A A fair measure of comparison.

MR. WATTS: That is all.

MR. REED: That is all.

MR. CARMODY: Just a moment.

Q (By Mr. Carmody) What connection do you have with this Aliquippa & Southern Railroad?

A None whatsoever.

Q Not even to regulate the traffic between that and the P. & L. E.; you have nothing to do with that?

A Nothing whatever.

Q What is your position?

A My position is assistant traffic manager.

Q And what does that mean?

A It means the handling of all matters pertaining to traffic, rate questions, matters pertaining to rate adjustment, appearances before rate committees and in connection with the estimates of rates on products that we make to the various points to which we ship or intend shipping, the handling of freight claims, the routing of orders, the quoting of rates and matters of that general character.

Q Your department has no connection with these tracers who trace the shipments to their destinations, in order that they get delivery that was promised the customer?

A We have a trace clerk in our organization to handle such requests as come to us from customers, to assist them in effecting prompt delivery. No shipments are traced for which the specific requests are not made, and our services to accommodate the customers.

Q Do you ever trace incoming shipments?

A Occasionally.

Q To expedite them?

A Occasionally.

Q How do you do that? Whom do you have to deal with in order to do that?

A Usually the operating officials of the railroads, the operating departments of railroads; sometimes the traffic departments, depending upon the particular case.

Q Do you ever have to go down and do a little looking around in the yards?

A That has been necessary, yes, a good many years ago.

MR. CARMODY: All right.

(Witness excused.)

MR. REED: That is all the evidence that the respondent has on the question of the Interstate Commerce feature of the case, and we move to dismiss, on the ground that the evidence adduced by the Board and also that adduced by the respondent, shows conclusively, within the decisions of the courts, that the business of the respondent is not interstate commerce, and any labor controversy, therefore, would not be within the jurisdiction of the Board. Further, the complaint only complains of matters of hiring or discharging employees, which is a matter that is not interstate commerce, even if it related to any agency in interstate commerce, and it seems clear to us that there is no jurisdiction in this case.

CHAIRMAN MADDEN: It would be very interesting, Mr. Reed, to hear you argue this question, but I suppose you do not care to do it, and I doubt whether we can take the time to do it. We are quite definitely committed to the doctrine that an enterprise such as has been shown, both by the government's evidence and by your own evidence here, is in a situation where its labor relations do affect interstate commerce, within the meaning of the act, and so your motion to dismiss is denied.

MR. REED: With respect to the specific complaints relating to employees, the respondent takes the position that it is the sole judge of the right to hire

and fire, and that it is not subject to the Board in that respect, and, therefore, declines to offer any testimony on that subject and withdraws from the hearing. We will stand on our legal position that the Board has no jurisdiction in this case.

MR. WATTS: Before Mr. Reed departs, which I see is imminent, I wonder if he has a map?

MR. REED: We have; yes.

MR. WATTS: I also wish the record to show, while Mr. Reed is still here, that I do not consider myself bound against offering further commerce testimony. I shall definitely put in more evidence on that subject. Mr. Reed understands that.

MR. REED: As to the map which I am supplying, although it bears the date 1930, I wish to state that there have been no substantial changes in the plant since that date.

MR. WATTS: I now offer the map in evidence.

Let the record show that I withdraw the offer of Exhibit No. 49 for identification.

CHAIRMAN MADDEN: It may be admitted.

(The map was thereupon received in evidence and marked "Board's Exhibit No. 50.")

(At this point, counsel for the respondent withdrew from the hearing room.)

MR. WATTS: Is there any representative of the railroad here?

C. A. TEERKES, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Watts) Give your full name to the reporter, please.

A C. A. Teerkes.

Q What is your occupation, sir?

A Freight agent, P. & L. E. Railroad, Aliquippa.

Q How long have you acted as agent of that railroad at Aliquippa?

A Since January 2, 1907.

Q Have you with you, pursuant to a subpoena by this Board, a statement prepared from your official records of inbound and outbound, interstate and intrastate shipments, carload and less than carload, made from the Jones & Laughlin Steel Corporation Aliquippa Works, Aliquippa, for the months of July and October, 1935?

A I have.

Q Will you produce those, please, sir?

(The witness produced papers.)

MR. WATTS: I will ask that this be mraked for identification, please.

(The document referred to was thereupon marked "Board's Exhibit No. 51" for identification.)

Q (By Mr. Watts) Calling your attention first to Board's Exhibit No. 51 for identification, will you tell me how this was made up? Where did you get the information that is in here?

A From the original records.

Q Did you personally oversee that job?

A I did.

Q And these are accurate reproductions?

A Yes, sir.

Q Of the official records of the railroad?

A Yes, sir.

Q Did you also calculate the percentages of intrastate and interstate shipments which are set forth here?

A I did.

Q As far as you know, those are accurate, are they not?

A Yes, sir.

Q Will you refer to the compilation, please, to the month of July, 1935, as a test month, and give us the number of inbound full carloads which moved in interstate traffic?

A 3,627.

Q And the number of intrastate full carloads?

A 846.

Q Making a total of—

A 4,473.

Q Now, what percentage of the total full carload inbound traffic was interstate, and what percentage intrastate?

A 81.1.

Q Was interstate?

A Interstate; yes.

Q And 18.9 was intrastate; is that correct?

A Yes, sir; 18.9.

Q Then, as to inbound shipments for that same month, in less than carload lots, will you give us the summary of that.

A Interstate 114, intrastate 75, total 189; percentage interstate 60.4; intrastate 39.6.

Q What was the month—October, was it not?

A Yes.

Q 1935?

A This only applied to inbound.

Q Oh, yes. We should get the outbound there before we move on to the other one.

A That is about six or seven sheets further on.

Q All right. Let us have the outbound shipments for July, 1935, full carloads, first. Give us the summary of that.

A Interstate, 1,341, intrastate, 651, total 1,992; percent interstate 67.3, intrastate 32.7.

Q And less than carload lots?

A Interstate 222, intrastate 85, total 307; interstate percentage 72.3, intrastate 27.7.

Q All right. Now move to October, 1935, if you will. First, take the summary of the inbound shipments, full carload lots. Do you find that there?

A Yes; I have it here. Interstate 4,764, intrastate 1,464, total 6,228; percentage, interstate 76.5, intrastate 23.5; less than carload, interstate 140, intrastate 97, total 237; percentage interstate 59.1, intrastate 40.9.

Q Now, the outbound shipments for October, 1935?

A Interstate 1,206, intrastate 790, total 1,996; percentage, interstate 60.4, intrastate 39.6; less than carload lots interstate 209, intrastate 87, total 296; percentage, interstate, 70.6, intrastate 29.4.

Q Now, will you state to the Board, please, your best judgment as to the percentage of the total freight business that is done at the Aliquippa station which originates in the mills of the Jones & Laughlin Company, as distinguished from other shippers?

A I could not give you that definitely.

Q No, no; your best guess.

A About 97 per cent.

Q About 97 per cent of all the business of your railroad at Aliquippa is depended upon the continued operation of the Jones & Laughlin works there, is that right?

A Yes, sir.

Q And would you say that the relative percentages of interstate and intrastate shipments, both inbound and outbound, in these two months concerning which you have testified, are fairly representative, month in and month out, as the years go by?

A I would say yes.

Q These are fair test months for that purpose?

A Yes.

Q Were you here when the amounts of money paid to the railroad for freight charges were testified to? Do you know whether or not those were accurate figures?

A I couldn't say.

Q In any event, the railroad would lose approximately 97 per cent of its business at that particular station if this company ceased operating, would it not?

A Yes, sir.

MR. WATTS: I offer the compilation in evidence. I do not know the total number of pages here, but they can clipped together and marked as one exhibit.

(The document referred to was thereupon received in evidence and marked "Board's Exhibit No. 51.")

MR. WATTS: Has the Board any questions of this witness?

CHAIRMAN MADDEN: I have no questions.

MR. WATTS: That is all. Thank you very much.

(Witness excused.)

MR. WATTS: Mr. Payne, will you resume the stand?

WALTER J. PAYNE, a witness previously sworn on behalf of the Board was recalled and testified further as follows:

MR. WATTS: This witness is recalled for the Board.

CHAIRMAN MADDEN: And you were sworn this morning?

THE WITNESS: Yes, sir.

DIRECT EXAMINATION (Continued)

Q (By Mr. Watts) When you were last testifying, Mr. Payne, you had reached the point in your testimony where you had described the holding of the

first open air meeting at Ambridge. Now, I want you to go on from there, and I want to ask you if at that time you went to Aliquippa and endeavored there to secure a meeting place, a meeting hall, so that you would not have to have outdoor meetings across the river in Ambridge?

A Yes, we made every effort.

Q What success did you have? Tell the Board what effort you made and how it turned out.

A First of all, when I got into Ambridge and located and got acquainted with these men, I was told I would get my head knocked off, if I was sent in there to organize but I have not got my head knocked off yet.

We held a series of meetings at Ambridge during the month of September and the first part of October, and in the meantime, while holding this series of meetings, on different periods, different days of the week, we across to Aliquippa, a delegation and myself, usually two or three or four went over.

Q For what purpose?

A What is that?

Q For what purpose did you go there?

A We went over there to make contact with the men and also to try to secure a hall whereby we could hold our meetings, hold them amongst the men in Aliquippa, so that they would not have to come across to Ambridge. all the time, and this time these men were under sort of a shadow—like a shadow of a club, I would say, and they were justfull of fear. To me they were terrorized. I never experienced anything like it in my life.

Q What men do you mean?

A The men employed by Jones & Laughlin Aliquippa plant, and in going into Aliquippa, we had to go in there kind of—it was kind of guerilla warfare. We had to rush in and rush out, owing to the fact that

as soon as we would show up in the town of Aliquippa we would be more or less followed around by one or two or three of the J & L police.

Q (By Chairman Madden) Afoot or otherwise?

A Mostly in machines, and if you stood around awhile, you would probably see one or two or more slinking spies, or they probably would come close to you and stand around, to see just what would occur, maybe make me feel as if I was amongst a gang of racketeers.

Q (By Mr. Watts) Tell us what success you had when you went to the owners of any halls at Aliquippa and asked them to rent them?

A We went to West Aliquippa one afternoon, a delegation and myself. We went around to the Italian hall there to request the renting of this hall to hold a meeting and to have Mrs. Pinchot speak. Well, the janitor met us and he was fair and candid with us and told us point blank that it was useless to talk to him about holding a meeting there in their hall for the purpose of a Union. We tried to—we asked him on whose authority he was doing this—the head of the organization, they had been instructed not to let out their hall at any time to the Union organization.

Q Did you go to other places to try to get a hall for meeting purposes?

A From there we went across to the Slovak Hall, with the same success. We also tried to get the Serbian Hall, with no success, because, in fact, one of the head men of the Serbian Hall was one of the men of what I called the type of stool pigeon for the company.

Q Did you try to get any open lots?

A We did one afternoon—at least one morning, we went across to Aliquippa and we tried to get two lots, with no avail. We failed to get those.

Q So that you could not rent either a hall or a lot to hold a public meeting in Aliquippa; is that right?

A Absolutely not.

Q Now, on the 20th of September, 1934, did you have a certain experience with the police force of Aliquippa?

A Yes; we did.

Q Will you state that for the Board, please, in your own way?

A It was our purpose this day to go across to Aliquippa and meet some of the boys, that is, Harry Phillips and Angelo Volp and Dominic Brandy and several of the other boys and Mr. Cox, and we met at Harry Phillips' home. We had been around different places prior to that, though, but there we ended our visit, at Harry Phillips' home, and it came down from there. I couldn't say very well what section; I think it was Hollywood, up on the left side, and came into Aliquippa. We were coming down the street, and Mr. Toogood and Mr. Clinton Stevens, another organizer of the bridge works, structural iron works—we were coming down, passing the school house about noon, I take it—yes—we were passing the school house, and coming on down to Franklin Avenue. There is a police officer on duty there, Police Officer Shea.

Q That is what we call on traffic duty; is it not?

A Well, traffic duty.

Q All right, go ahead.

A I think in my last testimony, I called him a constable. Where I come from, that is what they call them.

Q Go ahead.

A But this police officer, he gave us the right of way down on to Franklin Avenue, but as we were just about to pass him he recognized me I guess—no sooner said than done. We were driving approximately about 30 miles an hour, I would take it, and no sooner

said than done, comes right on our heels, on a motor cycle, Sergeant Monahan of the Aliquippa borough police force. He pulled in alongside of us. I told the driver to keep going, because we had done nothing. We had not violated traffic in any shape or form. We were in there legally, as I thought, and he pulled up alongside and said "Drive into the curb". I said "What is the matter, Sergeant?" He said "Drive in; you will soon find out", just like a bear. So we drove in, and finally he told us to drive down to the police station. We drove around to the police station and he examined and inspected the car and found the operator's license and everything O. K., and he looked inside the hood, examined the engine. I don't know what he expected to find in there. Then he examined thoroughly the inside of the car. The only thing he found was some cards, personal cards belonging to Mr. Stevens, which were of no value at all. He looked them over and he wouldn't give them back to Mr. Stevens. He just treated us like dogs. He said "Come inside the police station." So I asked him again "What is the charge?" He said "Get inside and you will soon find out."

After he told us to come inside the police station, I happened to spy a young fellow, as I thought, a man by the name of Mr. Reeder. He posed to us as a representative of the Sun-Telegraph and we took him in on good faith. So we thought if we could invite that young gentleman in the police station, it might do us a lot of good, and he would be a witness, if anything took place inside the police station.

There we were questioned by the Sergeant, but upon going in there and being taken up to the desk, there were two police officers there, and one was in civilian clothes, and the other one in uniform. No sooner the Sergeant gets behind the desk than those two police officers get down on the platform, a kind of

platform there, and the young fellow in civilian clothes, he takes his coat off, and gets hold of us club, and the other police officer—I think he was an Italian, a kind of athlete, takes off his tunic and shirt. He was in athletic underwear. He grabbed a club as well. They came and stood each side of us. Two other police officers came in, and this reporter was standing at the back.

We were questioned and finally Chief Ambrose came in and he asked us a few questions, who we were and all the rest of it. He already knew who we were, and it appears—the whole general appearance of that little incident there appeared to me that I believe that if that young fellow had been called in, it was a psychological move, that we might have undergone a pretty severe drilling—probably something else. But, anyhow, at the conclusion, they came to say that we were mistaken for a bald-head organizer, communistic organizer, from Clarendon, Pennsylvania. We were held there awhile and let go.

Q What did they tell you about coming back?

A They said to be careful. They didn't find any literature upon us that was detrimental or illegal, and we were not communistically inclined.

Q That took place in September, did it not?

A In September.

Q And in October of that same year were complaints made by yourself and others to the governor of the Commonwealth?

A Yes.

Q As a result of those complaints, did various officers of the Commonwealth come into Aliquippa and make investigations as to the situation there?

A Yes; they did, and I might state there that the first complaint sent in to the Commonwealth, the state troop department, was during the month of September, about the 29th, I should think it was. Mr.

Miller was the speaker that day, and during the week prior to this meeting we had information that the J & L police force were coming over to Ambridge in force.

Q When you say at the meeting, you mean the meeting at Ambridge?

A A meeting in Ambridge, at the corner of 11th and Martin Street. We had information that they were coming over there in force to break up the meeting, and they were going to be heavily armed. Well, we went—in fact, I did and two other men went to Beaver, and went into conference with Sheriff O'Loughlin, and he promised that he would undertake to give us all the protection that he possibly could, because he didn't want any trouble. It was our ambition at that time to organize these men under as peaceable terms as possible, and we also got in touch with the state police at New Brighton, and also with the governor at Harrisburg, and—

Q Just hold up for a minute. As a result of these various acts, did the governor send in the state troopers to Aliquippa?

A Yes.

Q And thereafter, for the time, were you and the members of this Local 200 able to obtain a place for a public meeting in Aliquippa?

A We were.

Q And carry on your ordinary civil rights?

A Yes, sir. I might state that prior to this the men that were instrumental, to my way of thinking, of organizing Aliquippa, were such as Harry Phillips, Angelo Volte, Domonic Brandy, a man by the name of Gum, Martin Gerstner, Lang, a man by the name of Dunn, Fred Dunn. These men were the only ones —well, there were several others, but I couldn't mention them right now, but these men were the only ones that had no fear for the J & L force at any time, and

they were really instrumental in organizing Aliquippa. They were very, very active, and they came over to Ambridge at all times, using a machine to bring men at the time they came over to Ambridge. The men were in fear at all times, so much so that, in fact, when these men were at our headquarters, at the Ambridge Hotel, they were in such a state of fear that they were shaking, and they didn't want anyone to see them enter or leave the hotel. That is some of the conditions that we found.

MR. WATTS: All right. Have you any questions, Mr. Madden?

THE WITNESS: Now, the question of state troopers coming in, I think I have a right in stating that it was on the request of the witnesses at the last J & L hearing on October 4th, I think it was, when we were called to the hearing. As the hearing was postponed these men we had were in such a state—

MR. WATTS: Never mind that Mr. Payne. You have given us the chronology of the complaint to the governor and the fact that state troopers were in there.

THE WITNESS: Yes, sir.

MR. WATTS: And there is no necessity of going into the other.

THE WITNESS: I wanted to bring out that Judge Stacey gave permission to them.

MR. WATTS: That is all. Thank you.

(Witness excused.)

MARTIN GERSTNER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Watts) Will you state your full name?
A Martin Gerstner.
Q Where do you live?

A 842 Beaver Road, Ambridge.

Q What is your occupation, Mr. Gerstner?

A Working on PWA now.

Q And before that?

A Motor inspector at the J & L.

Q When were you first employed by Jones & Laughlin at Aliquippa?

A Going on six years—in 1930.

Q And had you worked there regularly from that time on until the time of your discharge?

A Yes.

Q When were you discharged?

A December 14th.

Q 1935?

A 1935.

Q Prior to your employment at the Aliquippa Works, had you had a very considerable experience in the steel industry, including some fifteen years in the American Rolling Mill at Butler, Pennsylvania?

A Yes.

Q When you first went to the Aliquippa Works, how were you employed?

A I was employed as a wire man.

Q In the wire gang, were you?

A Yes.

Q And after that, to what department were you transferred?

A Motor inspector in the Blooming mill.

Q And you remained as a Motor inspector in the Blooming mill until the time of your discharge, is that correct?

A Yes, sir.

Q Are you the Martin Gerstner whose name appears upon the certified copy of the charter of the Beaver Valley Lodge No. 200, here is evidence as Board's Exhibit No. 48 (handing the document to the witness)?

A Yes, sir.

Q Were you the one who obtained this charter, as a matter of fact?

A Yes, sir.

Q What office, if any, did you hold in the Local Union at the time of its inception?

A Financial secretary.

Q Are you still that officer?

A Not now.

Q When did you cease to be such?

A The first of the year.

Q The first of 1936?

A Yes.

Q From 1934, when the Local was formed, up to the present time, have you attended all or most of the meetings which have been held by the Local?

A Yes, sir.

Q And one of the first of those meetings was held publicly in front of your house, was it not, in Aliquippa?

A The meeting?

Q Yes.

A No. That is where they had the guard around the house.

Q They had guards around the house, so that you could not have a meeting there?

A Day and night.

Q During this period of time, before December 16, 1935, had you from time to time been active in soliciting members for the Union?

A Very active.

Q Was that on your own time or on the company's time?

A My own time.

Q And was it on the company's property or off the company property?

A Off the company property.

Q Did you distribute circulars on behalf of the Union?

A I did.

Q And was that also done on your own time and off the company property?

A Yes, sir.

Q In general, was it openly known that you were an active officer of the Local?

A Yes, sir.

Q Now, as a result of this open conduct on your part, what, if anything, did the Jones & Laughlin police force do?

A Well, they guarded the house twenty-four hours a day, and the employment agent who was up there for weeks, sitting in the doorway to check every man that went in and out.

Q What about people that came to visit your family there; what happened to them?

A Some of them were called in.

Q Was anybody ever stopped on their way out from your house?

A Yes.

Q In automobiles?

A No. A fellow walked out there one evening and started up the street, and he had not gotten a block until somebody hit him on the head.

Q Were they questioned after leaving your house about what was going on in there?

A Yes.

Q And that regardless of whether they were visitors or friends or workers?

A Yes.

Q Was any employee of the Jones & Laughlin police force given a permanent assignment to follow you around?

A Yes.

Q Who was that individual?

A Donnelly.

Q What was Donnelly's job?

A Every time I went out or started up the street, it didn't make any difference if I was going to the grocery store, they followed me and stood outside and waited until I came out. It made no difference where I went, they were on my trail. And Slater was with him a lot.

Q He was another J & L policeman?

A Yes.

Q So that you were kept under individual observation all the time, as well as your house being surrounded; is that right?

A Yes, sir.

Q What happened to you, if anything, in your work, as a result of this open espousal of the Union cause?

A Well, as far as their activities—

Q Tell us before we get to that about the time you got in relation to others in your own department?

A I was kept down in time.

Q Did you have occasion to inspect and examine the sheets and compare the time you were getting and the time everybody else was getting?

A Yes; I did, and I could check it very easily.

Q Whose time did you compare your time with?

A The other inspectors.

Q That is, these motor inspectors in the Blooming mill?

A Yes.

Q When was it that you made this inspection for awhile?

A Well, it was in the summer.

Q Of 1935?

A 1935.

Q What did you find to be the case as to time?

A Well, I didn't get as much time as I should have gotten.

Q Well, never mind that. Did you get as much time as the rest of them got?

A No.

Q On the 6th of September, did you hold a conference concerning the labor conditions in Aliquippa with State and Federal representatives and investigators?

A I did.

Q Did anyone follow you—any representative of the Jones & Laughlin police force at that time?

A Yes, sir.

Q Where did you go?

A Over to the Ambridge Hotel.

Q Was any of these persons present there?

A Donnelly and Slater.

Q Both of them were there that day?

A Yes.

Q Now, on the 14th of October, 1934, that was the time when the State Troopers came in, pursuant to the governor's order, was it not?

A On the 14th day of October was the first open meeting we had in Aliquippa. Mrs. Pinchot—

Q Where did you get a hall for that meeting?

A The Polish Hall.

Q You were about to say somebody addressed you at that meeting. Who was that?

A Mrs. Pinchot.

Q And that was held under the protection of the State Troopers, was it?

A Yes.

Q Was that the first time, as long as you were in Aliquippa that the workers of the Jones & Laughlin Company were free to hold a meeting and to obtain a hall for a meeting and to get protection for those addressed the meeting?

A It was.

Q Now, following that entry of the State Troopers, there was a better situation, as far as meeting with people and talking with people was concerned; is that right?

A Yes.

Q In the Blooming mill in which you worked, will you tell us how many motor inspectors work on each shift?

A One on each shift in the Blooming mill—four inspectors.

Q Four motor inspectors around there?

A Four motor inspectors.

Q And there are three shifts?

A Yes; there are four shifts.

Q Four shifts?

A Yes.

Q That is because of the 40 hour week requirement, is it not?

A Yes. One man is off while the other ones are working.

Q That made sixteen motor inspectors?

A Yes. There were four at the pits, four at the Blooming mill and four at the bar mill and the ten inch skelp mill.

Q You were one of those sixteen?

A Yes.

Q Approximately how many men worked in that department?

A Well, we had two representatives, and each representative was supposed to represent 300 men.

Q So that on a rough calculation you had 600 men working there; is that it?

A Yes.

Q The representatives you speak about are representatives under the employee representation plan of the company; is that right?

A Yes.

Q Did you have any rights of seniority?

A No.

Q Did anybody have any rights of seniority?

A Not that I know of.

Q Did you have motor inspectors there, who, in fact, were junior to you in employment?

A Yes, sir.

Q How many of them?

A Two or three, anyway.

Q And following your discharge in December, 1935, if you know, was your place filled by another motor inspector?

A Yes, sir.

Q So that there was no question of slackening off of work; is that right?

A No, sir.

MR. WATTS: I want to stop the examination for a minute and call the Board's attention to Board's Exhibit No. 5, the statement made to the Securities & Exchange Commission by the respondent company, which shows that the respondent company, not only owns and operates the Aliquippa & Southern Railroad, of which mention was made this morning, but the Woodlawn & Southern Street Railway Company in the borough of Aliquippa, Pennsylvania, it owns the Woodlawn & Southern Motor Coach Company, being a bus line, principally in Aliquippa and Ambridge; it owns the Woodlawn Water Company, supplying the borough of Aliquippa; it also owns the Woodlawn Land Company, which owns some 674 dwellings occupied by employees of the company.

Now, with that before the Board, I would like to ask the witness this question:

Q (By Mr. Watts) In the year 1935, when you were discharged, if you know, had the sheriff of Beaver

County ever been employed by the Jones & Laughlin Company?

A No; I couldn't say that. The only thing was that we wrote the sheriff of Beaver County a letter asking him what jurisdiction he had over the J & L police, and a letter came back in this way:

"In reply to your letter, I have no jurisdiction over the J & L police. For further advice, see your attorney.

Charles O'Loughlin."

Q I do not mean while the sheriff was sheriff, I mean before he became sheriff, do you know whether or not he was ever an employee of the J & L Company?

A Yes.

Q How was he employed by the J & L Company; what was his job, if you know?

A He worked up around the open hearth. If I am not mistaken he ran the ladel crane, I think. I would not be positive.

Q How about the chief of police of Aliquippa? Had he ever been employed by the Jones & Laughlin Company before he became chief of police?

A I couldn't say that.

Q How about the warden of the county jail?

A Brown?

Q Had he ever been employed by the Jones & Laughlin Company?

A I am not positive. I think he was.

Q Well, if you do not know that, I will prove that by another witness.

Now, in the election of 1935, were you a candidate for any public office?

A Candidate for sheriff.

Q And the 17th day of September was primary day, was it not?

A It was.

Furs. fls.

Furs. j. fls. Gall. 3/2/36.

Q Do you recall having a conversation on that day with any member of the police force of the J. & L. Company?

A Captain Mauk.

Q What was the substance of that conversation with the chief of the company police?

A He came up to me, I was driving around to the polls, one to another, and he came up to me and said to me, "Do you think you have a chance?"

I said, "I don't know. I am in the field some place."

He got to talking to me and he said, "You belong to that union, don't you?"

I said, "Yes."

He said, "You have done a lot of work?"

And I said, "Yes."

He said, "That is a thing I never liked." And I told him the fellows were entitled to collective bargaining.

Q Did he make any other remarks?

A No, he walked away.

Q What?

A He walked away.

Q That was in September. What was the reason given to you by the person who discharged you, for your discharge?

A A nut fell off a crane.

Q Who said that?

A Rainbow.

Q Mr. Rainbow is what?

A He is assistant to Carroll.

Q Assistant superintendent?

A To the chief.

Q When did they tell you that a nut had fallen off a crane?

A Monday evening when I reported for work at four o'clock.

Q When did they say the nut had fallen off?

A Sunday afternoon.

Q About what time?

A Around about one o'clock.

Q In the afternoon?

A Yes.

Q And I suppose they told you that you should have found the nut and not let it fall off? That was the general idea, was it?

A Yes.

Q Between the last tour of duty which you had as a motor inspector and the time when this nut is said to have fallen off the crane, how many, if any, other motor inspectors had been on duty?

A Three.

Q Name them.

A Fred Linde, George Bevington, and Harry Lang.

Q And over how many hours had they been inspecting? Was that three eight hour shifts?

A That was on the third eight hour shift.

Q Was the crane in use during those three eight hour shifts that you were away?

A Well, it would not have been used much. I don't know whether they used it any or not, but to make a few lifts.

Q Were any of those three motor inspectors discharged or disciplined in any way?

A No.

Q Had you ever been charged before with any improper inspection or any failure to locate any trouble in the equipment of the plant?

A No.

Q Now, on the 5th or 6th of December, some ten days before you were discharged for this alleged

incident, did you have knowledge of any craneman who was intoxicated while on duty?

A Yes, there was a fellow came out intoxicated.

Q Was he operating a crane?

A He was.

Q Did you report that fact to anyone?

A No, I think it was a known fact.

Q Who was the foreman?

A Steve Dusenberry.

Q Was that man discharged?

A No.

Q Anything done to him, as far as you know?

A He was removed off the crane and put up on the pits with the millwright, and the millwright was taken down and put on his crane, and he turned up missing and nobody knew where he went.

Q Will you tell the Board as to the incident of Mr. Bailey?

A Mr. Bailey ran the blooming mill crane. I went up on the crane one day and he had no safety lock on the crane, there was none there. I went up to do some repairing and I did not have my lock with me. I asked him if he had his and we looked and he had no lock. I told him the best thing he could do was to report it. I went down and got my lock and put it on. He reported it and I know the lock was off for a week. There was none on the crane.

Q What was done about Mr. Bailey?

A Nothing.

Q How long was that before your discharge?

A That was probably a couple of weeks.

CHAIRMAN MADDEN: May we recess for five minutes?

MR. WATTS: Sure.

(A short recess was taken.)

Q (By Mr. Watts) Mr. Gerstner, do you know of

any other incident prior to your discharge in which a shoe fell off of a crane while it was being operated?

A Yes.

Q How long before your discharge was that incident?

A That was probably—that has been two or three years.

Q And what action, if any, was taken in respect to the man responsible for that?

A I think a week off.

Q Was there any union in the plant at that time?

A No.

Q What was your rate of pay at the time of your discharge?

A 50 cents an hour and tonnage.

Q And what were your average weekly earnings?

A Well, it varied.

Q Yes, but what was your average?

A I would judge along about $50.

Q $50 a week?

A Or $60, something like that.

Q Which is more correct?

A It would vary between the two, between $50 and $60.

Q Have you earned any money since your discharge?

A Not until last Monday I went to work on the P.W.A.

Q And how much have you earned in all since last Monday?

A Five days.

Q How much?

A $80—about $20.

Q I show you a copy of a termination notice. Is that a copy of the one you received from respondent?

A Yes.

MR. WATTS: I offer it in evidence.

(The document referred to was received in evidence and marked "Board's Exhibit No. 51½".)

Q (By Mr. Watts) Now, Mr. Gerstener, I want to ask you a few questions which will bear more directly upon the case of Mr. Phillips. Mr. Phillips is one of the complainants here, as you know, and what was his occupation?

A Motor inspector.

Q And did he work in the blooming mill?

A At the soaking pit.

Q At the soaking pit? And do you know the alleged reason for his discharge?

A I understood for not answering the whistle.

Q When you say "not answering the whistle", will you state briefly what you mean by that?

A He was supposed to have a call; they blow the whistle for a breakdown and he was supposed not to have answered the whistle.

Q That is, some man in the department has something happen to his machine and he blows the whistel to have the inspector come and help him, is that it?

A Yes.

Q And it is alleged that Mr. Phillips failed to respond to such a call?

A Yes.

Q After Mr. Phillips' discharge, was there an occurrence when a whistle blew and you investigated that whistle?

A Yes.

Q That was not one that you were supposed to answer yourself, was it?

A No.

Q And in what department was it?

A It was the 10-inch mill.

Q And did anyone answer the whistle?

A I did.

Q Did anyone else?

A No.

Q Now, then, after you had gone over to find out what was happening in the absence of any other inspector, did you report that occurrence to any official of the company?

A I did.

Q To whom did you report it?

A Mr. Springer.

Q And were you accompanied by anyone when you went to Mr. Springer?

A Mr. Schwartz.

Q Did you then describe to Mr. Springer the failure of that particular inspector to answer the whistle?

A I asked him if the 10-inch man was not working and he said, "Why?".

I said, "His whistle blew and I had to go down and nobody showed up."

Q And that is precisely the same kind of a thing for which it is said Mr. Phillips was discharged?

A Yes, sir.

Q Was the inspector, whose duty it was to answer that whistle, discharged or otherwise disciplined?

A No.

MR. WATTS: That is all, Mr. Gerstner, thank you.

MR. CARMODY: May I ask a question.

EXAMINATION BY MR. CARMODY

Q (By Mr. Carmody) This termination notice does not say anything about a reason for discharge, does it?

A No.

MR. WATTS: May I explain to the Board that those notices have two parts, one of which has the reason on it, and the theory is that that part is torn off and retained by the company. I have in one instance

a card in which by error the employee was given the whole card, showing the cause of his discharge, but normally that portion of the card is retained by the company.

MR. CARMODY: Will that be put into evidence?

MR. WATTS: Yes.

Q (By Mr. Carmody) Another question: How did this discharge take place? What happened?

A When I reported for work on a Monday at four o'clock, I went into the shop and Mr. Gray came to me and said, "Don't change clothes."

I said, "What is up?"

He said, "I want to see you."

I said, "What is it?"

"Well," he said, "wait until the fellows get out of here."

I said, "If you have anything to tell me I am not ashamed of the fellows hearing it." I said, "Am I fired or what?" I did not know what it was all about.

He said, "Come on in the office." I went in the office and Mr. Rainbow was in there and Mr. Gray. He said to me, he said, "You know," he said, "you did not inspect the engine room crane and you are being discharged. What have you got to say?"

I said, "There is no use of my saying anything because you fellows will have your way anyway."

That is all that took place and they handed me my time. They wanted me to carry my tools out which I told them I would get in a day or two. They insisted I take them out before I left there and somebody carried them to the police gate and that is where I got them.

Q That is all that was said?

A Yes.

EXAMINATION BY CHAIRMAN MADDEN

Q (By Chairman Madden) Why do you think you were discharged, because the nut dropped off?

A That is what they told me.

Q There at that conference?

A Yes.

Q Well, tell us everything that was said at that conference.

A He called me and told me I did not inspect the crane, the nut fell off and I would be discharged. There wasn't much of a conversation to it. I did not argue the point with them because I knew it was no use. They already had my time made out.

EXAMINATION BY MR. CARMODY

Q (By Mr. Carmody) That was on Monday?

A That was on Monday, yes.

Q When had you worked last?

A On Saturday, 8:00 to 4:00.

Q In the afternoon? 8:00 in the morning until 4:00 in the afternoon?

A Yes.

Q The crane had not operated much, you say, between that time and when?

A Well, they would use it Sunday morning. I know the crane would be busy Sunday morning and the nut fell off around 1:00 o'clock Sunday afternoon.

Q What time did you come to work on Monday? 8:00 o'clock in the morning?

A I worked Saturday 8:00 to 4:00. Sunday was my day off and I did not work Sunday. I reported for work Monday at 4:00 o'clock.

Q In the afternoon?

A Yes.

Q Changing shift?

A Yes.

Q Somebody had worked in the morning?

A Somebody had worked 4:00 to 12:00 and some-

body else from 12:00 to 8:00, and the crane had started at 4:00 in the morning.

Q Where did this nut come from?

A They said it came off the brake.

Q Did they show it to you?

A No, they said it was laying on the bench. I did not bother looking.

Q Did anybody look to see whether it actually came off there?

A Not that I know of.

Q Had you seen the nut in the course of any inspection you had made on any previous turn, that particular nut?

A No, I could not say that I did.

Q How many cranes did you have to inspect?

A Three.

Q What sort of inspection did you make of these cranes?

A Well, we had to go over them and look up loose nuts and bolts.

Q Did you ride with the operator in the crane?

A No.

Q How did you make your inspection? While they were in operation?

A No, while they were stopped. You would go up and go over them then. They had a rule there that the inspectors had one crane on each turn. The blooming mill crane was 8:00 to 4:00 and the slow crane, that is, No. 2, was 4:00 to 12:00, and the engine room crane was 12:00 to 8:00.

Q Did you have any check list that you had to check off to show you had inspected certain parts of the crane?

A They were supposed to make out a time sheet but they were not made out half the time.

Q Had you ever talked to Gray about any of

these matters before or had he ever talked to you about the union or any other activity?

A He had never said anything. The only thing he ever told me was to be careful.

Q Gray told you that?

A Yes. He used to come down in the mill at 3:30 when I worked from 12:00 to 8:00, around 3:30 or 4:00 o'clock in the morning, to see what he could see.

Q Who was the superintendent who signed the termination slip? I can not read the name.

A Mr. Rainbow and Mr. Goetz.

Q Mr. Rainbow's name does not appear on this.

MR. WATTS: Gray and somebody else.

THE WITNESS: Mr. Goetz.

Q (By Mr. Carmody) What is his job?

A Superintendent.

Q Superintendent of what?

A Of the blooming mill.

Q Of the mill?

A Yes.

Q Did you work in a maintenance department or did you work in the blooming mill?

A The maintenance department.

Q Who was in charge of that?

A Walter Gray.

Q And who was his boss?

A Mr. Rainbow.

Q So Rainbow was the man in general charge of maintenance?

A Yes.

Q And he is the man that questioned you about this? Was he present when you were dismissed?

A Yes.

Q Did he know anything about your activities around town?

A Yes.

Q He personally knew about them?

A Yes.

Q Did he ever talk to you?

A No; Mr. Goetz called me in the office, though.

Q When was that?

A That was right after we had started.

Q Started what?

A To organize the union.

Q What did he say?

A He told me about the union; he said it would only bring strife and hardship; he said, "You know the company does not approve of an outside union." After he had finished telling me, I said, "Mr. Goetz, do I understand this right?" I said, "A man can belong to anything he wants to?"

He said, "Oh, yes."

I said, "That is the way I understand it." So, they never said no more after that.

Q Were you ever active in the employee representation plan? Did you ever take any part in it at all?

A In the first election they held I voted.

Q You voted?

A Yes.

Q What was that election for, to determine whether the men would adopt the plan, or to elect officers?

A No; to elect officers.

Q Did they ever have an election while you were there to see whether or not the men wanted the plan or not?

A No.

Q MR. WATTS: Pardon me; when did that start up?

THE WITNESS: We started out, I believe, in 1934.

MR. WATTS: The union?

THE WITNESS: Yes.

Q (By Mr. Carmody) Were you there when it was introduced?

A The company union?

Q Yes.

A I was working there.

Q Where did you hear about that?

A Working in the mill.

Q Who told you?

A They passed books and pamphlets around.

Q Who did?

A The foremen.

Q Have you got any of them now, those books or pamphlets?

A I have not now.

Q Do you know whether anybody has or not, out there at Alequippa?

A Yes.

Q Was there a meeting of any kind in the department, bringing the men together and telling them what it was and explaining it to them, or was the first official act an election?

A The election was about the first thing we was told. They passed a few pamphlets around and then they elected the men to represent them.

MR. WATTS: Look at this pamphlet and tell the Board whether this was one of those that was passed around.

THE WITNESS: (After examining) Yes.

MR. WATTS: I will offer in evidence a pamphlet, date June, 1933, being one just identified by the witness.

(The document referred to was received in evidence and marked "Board's Exhibit No. 52".)

MR. WATTS: I show you now another pamphlet, entitled "Jones & Laughlin Steel Corporation, Employee

Representation Plan, Aliquippa Works, by-laws as amended to May 18, 1935". Were those handed around?

THE WITNESS: (After examining) Yes.

MR. WATTS: I offer it in evidence.

(The document referred to was received in evidence and marked "Board's Exhibit No. 53.")

MR. WATTS: Have you any other questions?

MR. CARMODY: Yes, I want to ask a question or two.

Q (By Mr. Carmody) Where was that election held?

A On the company, inside of the mill.

Q You voted?

A No, not the last one.

Q You voted at one election?

A The first one.

Q Who conducted that first election?

A The company.

Q What do you mean, the company?

A Why, the J. & L.

Q I mean, who were the people that did it?

A They appointed fellows to work on the boards.

Q The men did not elect an election committee themselves, do you mean?

A No.

Q How were these elections held? Were they held by crafts or by districts, or how were they held?

A They gave you a ballot, but the minute you walked in the door and they took your check number it counted as a vote whether you voted or not. There were more blank ballots cast than I think really was voted at the last election or the one before.

Q The one you voted at?

A The first one? Yes, there were several blanks in that.

Q Now, what I am getting at is this: Was your

representative an employee of the maintenance department or was he an employee of the blooming mill?

A Our representative?

Q Yes, the man that you had a chance to vote for?

A The one that they have there now, the last one we had, he is out of the office. He was a timekeeper.

Q The timekeeper was the representative of what, the blooming mill men or the maintenance men?

A Of the blooming mill men and that includes all.

Q Then you voted as part of the blooming mill?

A Yes.

Q Because you were working in the blooming mill in spite of the fact that you were really doing maintenance work and responsible to the head of another department, is that right?

A How is that?

Q Here is my point: As I understand it, you really are a member of the maintenance department. Is that right?

A That is right.

Q All right; as a member of the maintenance department you work in the blooming mill?

A That is right.

Q You were not a blooming mill man; you could have inspected motors on the soaking pits or any other place?

A Yes.

Q But for that time you were working in the blooming mill?

A That is right.

Q Now, what I am trying to get at is whether you had a representative who represented the maintenance men or whether the representative that was elected by you and the other people in the blooming mill was elected out of the blooming mill to represent all the people in the blooming mill, no matter what they did?

A He represented them all.

Q And that man is, so far as you know, a time-keeper in the office?

A Yes.

Q That gets that part out of the way. Now, when did you know how the election turned out?

A After they put their posters up.

Q Who were the tellers that counted the ballots?

A Well, men that was appointed in the mill. I did not know any of them. I did not even go near to vote. I was not even near their voting booth.

Q That is the last election you were talking about?

A Yes.

Q But the first election you did go there and vote?

A The first election I voted.

Q Were the tellers appointed by the company at the first election?

A Yes.

Q They were not selected by the men?

A No.

Q You did not know any of them?

A No.

Q Did you ever hear any report from the people that counted the ballots themselves? Did they announce that the ballots had been counted?

A No.

Q But you saw a notice posted on the bulletin board telling how the election came out?

A Yes.

Q Did that notice tell how many blank ballots there were?

A No.

Q Did it tell how many total ballots were cast?

A It told how many votes each man got.

Q That is all?

A That is all.

Q It did not tell how many were void because they

were illegal or because they had no marks on them or anything else?

A They had no illegal ones. After a man's check number was checked off he automatically voted, and it was counted as a vote.

Q How did they know who to count it for?

A What did you say?

Q How did they know whom to count it for?

A I don't know that.

MR. CARMODY: All right.

MR. WATTS: All right, thank you; that is all, Mr. Gerstener.

(Witness excused.)

MR. WATTS: Mr. Phillips.

HARRY V. PHILLIPS, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Watts) Where do you live, Mr. Phillips?

A 255 Franklin Avenue.

Q Are you married?

A Yes, sir.

Q Have you got any children?

A Four.

Q What is your occupation?

A I am working on the W.P.A. at the present time.

Q Before that what was it?

A I was a motor inspector in the blooming mill—the soaking pits, rather.

Q In the Alequippa works of the Jones & Laughlin Company?

A Yes, sir.

Q I notice on Board's Exhibit 48 the name of Harry

V. Phillips, president of Beaven Valley Lodge No. 200. Are you that Harry V. Phillips?

A Yes, sir.

Q You are, therefore, the first president of the local union at Alequippa?

A Yes, sir.

Q And a charter member, of course?

A Yes, sir.

Q Have you attended all or most of the meetings of this local union since its inception?

A Practically all meetings.

Q Have you been active at all times in promoting its interests around Alequippa?

A At all times active.

Q So far as you know, was August, 1934, the first time that any independent labor organization had ever been formed in the ranks of the Jones & Laughlin plant at Alequippa?

A That was the only time I ever heard of one being formed. I think it is the only time there ever was anybody got together and tried to form one.

Q Yes. Now, then, that was in August of 1934 that that was formed, was it not?

A August, yes.

Q And in November, 1934, the National Steel Labor Relations Board was already holding hearings on certain charges as to unfair labor practices against the respondent company, was it not?

A Yes, sir.

Q You were a witness at those proceedings?

A I was.

Q Now, between the time of the formation of the local union and those Steel Board hearings in November of 1934, did you have any conversations with Captain Harris and Lieutenant Kelly of the Jones & Laughlin police?

A I did.

Q Give us the substance of those conversations.

A It was August 5th, the day after we ordered our charter. I was upstairs and I saw the police car draw up in front of my house. Lieutenant Kelly came to the door and my wife went to the door and he said, "Mr. Phillips in?"

My wife said, "Yes, he is upstairs."

"Will you tell him Captain Harris of the Jones & Laughlin police wants to see him?"

So I came downstairs and I went out to the car. He says, "Hello Phillips."

I said, "Hello, Captain."

He said, "We were just thinking of putting on some more men on the police force and we have you in mind."

I said, "Yes?" I said, "What does it pay?"

He said, "You will start at 50 cents an hour." And he said, "What are you getting where you are?"

I said, "I am getting better than that."

He said, "Would you like to be a cop for us?"

I said, "Yes."

And he says, "Now, cut out the kidding. What was you doing over at Ambridge Saturday?"

"Oh," I says, "I was over looking around to see if I could buy a used car."

Q What had happened in Ambridge Saturday?

A Harris, Donnelly and all the Jones & Laughlin police force chased us all over Ambridge, me and Martin Gerstener, to see where we were going.

Q Where were you going?

A We had a date with the organizer over there to send for our charter.

Q You were offered a job on the police force the day after you got your charter? Did you accept the job or not?

A I did not accept the job.

Q Did you continue your union activity?

A I did.

Q During this same period of time and after you had that job offered to you, which you refused, did you suffer any personal violence in Alequippa?

A I did. It was the latter part of August, I just can not—I have not got the date down—I was ordered to work at 9:30 in the evening and I was delivering some union papers around the town, and the chief of police, Ambrose Donnelly of the Jones & Laughlin police, and another man from the Jones & Laughlin police was in a car up in front of my house. They asked me what I was doing and I said I was delivering these Amalgamated Journals. And I said, "You fellows better take one. You are liable to get educated."

They said, "Just a minute; we want to talk to you."

I said, "I can not stand here and talk to you because I have to be at work at 9:30. I have to change clothes and get down there."

On my way going down to work I would see this car, and the first time it came up and circled around me and the chief of police and Donnelly and this other man, Slater, was in it. The next time I got a little further down the street and the chief of police was not there but Donnelly and Slater was.

When I got about a block away from the "Y", right in front of the Strand Theatre that was the last time that they passed me and they went back down towards the "Y".

I started to go in the mill and I saw a couple of men I wanted to catch up with and I started hurrying up to get up with them, and just going in the tunnel I noticed that there was a light out. I did not notice that at first but I noticed it later, a street light was out. It was kind of dark there and there was a man standing alongside of some parked automobiles and a man standing about ten feet further up the sidewalk.

As I was going by he said, "Harry Phillips, just a

minute; I want to see you." And as I turned to see who it was I got a righthander in the jaw, and the minute I got that another fellow came up and hit me over the head with a blackjack. I was fortunate to get the blow on the jaw because it forced my head back. because I had a soft hat on and it stopped the other blow which was going for the back of my ear.

Then they started pushing me in between some parked automobiles. I do not know how I did it, but I got hold of both of them around the neck and I got them both down on the ground. I hollered for help, I was pretty dizzy, I could not get my bearings. There was two fellows coming along, going to work, and they pulled one fellow away from me and the other fellow scrambled around and got out and went up over the railroad tracks. The man they pulled away from me had a screw driver and a blackjack, and as I was coming out around the car he made a lunged at me and missed. I grapped a piece of slag and started after him and he started up the steps to the P. & L. E. Railroad station. As I looked up I saw four men. I could see that he was going to do something and I went looking for an officer. At all times there is an officer in the "Y" at Alequippa, I never went there when I could not see one or two or three, but when I went looking for him there was not one.

At that time there was fully 25 or 30 Jones & Laughlin stool pigeons meeting trains, automobiles, and everything. They were right in that vicinity but I could not see one of them. They all cleared out.

I went to the police station and I went in and told the sergeant on the desk that I was waylaid down by the "Y". He says, "What have you been drinking?"

I said, "I have not been drinking." I said, "I want some police protection so that I can get to my work."

He says, "Get the hell out of here. You don't deserve protection."

I went out and I got in the—there was a fellow going to work and I got in his car and rode into the mill. I no sooner got in the mill than my foreman was in there and the daylight foreman came down, and he said, "How bad are you hurt?"

I said, "Not very bad."

He said, "Come out to the hospital."

I said, "What? The J. & L. hospital?" I said, "What do you want me to do, get killed altogether?"

He said, "No, we will fix you up." I went out there and the nurse fixed me up, put a plaster on my lip and fixed up my head. Then I went back in and finished my night's work.

Q Now, then, you testified about those facts at the Steel Board hearing?

A I did.

MR. WATTS: At this time I would like to request the Board to take judicial notice of the fact that the statute under which the National Steel Labor Relations Board was holding its hearings in November of 1934 became operative on the 27th day of May, 1935. That date has some importance on the subsequent testimony of this witness.

Q (By Mr. Watts) Now, you have heard the testimony here today about the Employee Representation Plan of the company?

A Yes, sir.

Q And in June, wasn't it, that it had its annual election?

A June, yes.

Q Now, in June it was having its first annual election after the formation of your independent union, wasn't it?

A Yes, sir.

Q Did you become at all active in respect to the course the union members should take in relation to that company union election?

A I did.

Q What did you do? What did you say?

A I was chairman of three meetings and spoke at three meetings before big crowds and told them not to vote in the company election.

Q Were those public meetings?

A Public meetings.

Q And in Alequippa?

A In Alequippa.

Q And you told the men to do what?

A Not to vote in the coming company election.

Q By that I mean, did you tell them not to go to the election or to cast a blank ballot, or did you tell them which to do?

A I told them not to go.

Q Not to go near it? When the election came around, following your advice what did the men do?

A On the primaries they held off wonderfully, very few voted; the only ones that voted practically was made to vote.

Q Were any attempts made by foremen, superintendents, or others in authority, to force the men to vote?

A Yes; I seen our own foreman go over to the wash house and almost try to lead a man to go to vote. Walter Gray was the foreman.

Q So that there was considerable difficulty encountered by the company in conducting its 1935 election in June?

A There was.

Q Following your public speeches about the matter?

A There was.

Q Now, then, early in June of 1935 did anyone from the Woodlawn Land Company come to see your wife?

A No, that was—when they came to see her it was in September.

Q In September? Later on? All right. On the 14th day of July, 1935, was the mill shut down?

A No, on the 14th of July the mill was not shut down.

Q I ask you whether that was the time when you requested permission to go to a picnic?

A I did.

Q Either then or in that neighborhood?

A It was Saturday the 13th I asked for permission to go to that picnic.

Q Whom did you ask permission of?

A Walter Gray.

Q And he is the foreman?

A He is the foreman.

Q What did he say to you?

A He says, "No, you will have to work."

I said, "Well, I am on the committee of the picnic."

"Well", he says, "I don't care. You got to be here to work."

Q To refresh your recollection, what, if anything, was said about having time to go to picnics in the future?

A He said, "If you want off for that picnic, you will have time to go to a lot of picnics in the future."

CHAIRMAN MADDEN: What kind of a picnic was it?

THE WITNESS: The Democratic Social Club, they had formed was holding its first picnic. We had quite a big day out there, quite a lot of prominent speakers coming, I was on the committee and I wanted to be there.

Q (By Mr. Watts) Now, what was the date of your discharge?

A It was 4:00 o'clock in the morning of July 20th.

Q Who discharged you?

A Walter Gray.

Q So that you were then free to go picnics, is that right?

A Yes, and when I was getting ready to leave he was getting ready to leave also, and he said, "You will have plenty of time to sell papers too."

Q I show you a photostat copy of a termination notice and ask you if that is the one you recieved from Mr. Gray?

A That is the one I received from Mr. Gray five days after I was discharged.

MR. WATTS: I offer it in evidence.

(The photostat copy referred to was received in evidence and marked "Board's Exhibit No. 54".)

Q (By Mr. Watts) Tell the Board the circumstances of your discharge, what was said to you and what was the supposed cause of your discharge.

A I was working from 12:00 to 8:00, it was my first turn at 12:00 to 8:00 of that week. It started on a Saturday morning and I came to work. First, I had a breakdown on No. 3 crane. I fixed that. Then on No. 1 the dope box on the drive shaft fell off, or busted off, and I had that fixed temporarily to allow him to go out and charge the heat. I had some trouble with No. 3's merry-go-round, and I fixed that.

All during the night I was pretty busy up until about, I would say, 3:30, and I got caught up and I went over to the restaurant to eat.

It was a very hot night, and after I left the restaurant I went over to the wash house, I was pretty well chafed and I decided I would wash myself and put some vaseline I had on where I was chafed from the heat. At that time I heard the whistle blow and I saw my millwright going to answer the whistle so I finished

up what I was doing and I went over and answered the whistle. When I got there the man on the pump told me everything was all right. So, I talked with the man on No. 2 for a while, we lit a cigarette, and then I said, "I have to checks bolts, we are all out of bolts."

I no sooner got in the shanty to check bolts when the whistle blew again. I went out and the foreman on the day turn was out at 4:00 o'clock in the morning. He said, "Why don't you answer that whistle?"

I said first, "I didn't hear the first whistle, but the second time he blew I heard it and I was over in the wash house and could not get over right away."

He said, "You fellows coming out at night always want the millwrights to do all the work around here." He said, "You can get to hell out of here."

I said, "What does this mean? Am I fired?"

He says, "Yes, it means you are to get to hell out of here."

I says, "O.K."

He says—then he started talking to me for a little while and then I said, "Will I take my tools?"

He said, "Get the hell out of here. You are going to have plenty of time to sell papers from now on."

Q At the time of your discharge what was your rate of pay?

A 50-1/4 cents and tonnage.

Q What were you averaging each week?

A We never got paid weekly. We got paid semi-monthly and it was between $50 and $60.

Q Have you earned any money since the time of your discharge?

A I worked for the State of Pennsylvania on the highways for $16 a week for four weeks, and I got about $300 from W.P.A. work.

Q Now, since the time of your discharge have you been dispossessed from your home?

A I have been.

Q I show you this notice of the Woodlawn Land Company and ask you if you received that notice?

A I did.

MR. WATTS: I offer it in evidence.

(The notice referred to was received in evidence and marked "Board's Exhibit No. 55".)

MR. WATTS: The record already shows this company to be a wholly owned subsidiary of this respondent. That is all, Mr. Phillips. Any questions?

CHAIRMAN MADDEN: You say you got $50 to $60 a pay? That is for two weeks?

THE WITNESS: Yes, sir.

MR. WATTS: I want to check that up with Gerstener. That may be the case with him, I do not know.

MR. CARMODY: Let me ask one thing.

EXAMINATION BY MR. CARMODY

Q (By Mr. Carmody) You said you got 50-1/4 cents an hour and tonnage?

A Yes.

Q What is that tonnage basis?

A On what the mill produces, what she rolls.

Q How would your portion of that tonnage be figured, do you know?

A It was figured at 94 cents a hundred, divided between four men.

Q A hundred what? Tons?

A Yes.

Q In other words, for every ton produced on your turn you got one-quarter of 94 cents?

A Yes, about twenty-three and a fraction cents.

MR. CARMODY: All right.

MR. WATTS: Thank you, Mr. Phillips.

(Witness excused.)

MARTIN GERSTENER, recalled as a witness for the National Labor Relations Board, being previously duly sworn, testified further as follows:

FURTHER DIRECT EXAMINATION

Q (By Mr. Watts) Mr. Gerstener, from right there where you are, never mind coming, you testified to your average earnings; was that weekly or twice a month?

A Twice a month.

MR. WATTS: Thank you. That is all.

(Witness excused.)

MR. WATTS: Mr. Razzano? My associate will conduct this examination.

ANGELO RAZZANO, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kleeb) Where do you live?

A Alequippa, 194 Baker Street.

Q Are you married, Mr. Razzano?

A Yes, sir.

Q Do you have any children?

A Five.

Q I believe you are a tractor driver or operator?

A Yes, sir.

Q How long have you been that for the Jones & Laughlin Steel Corporation?

A Since 1923 or 1924; I think 1924.

Q What is the nature of that work?

A I used to work in the seamless tube.

Q No, what do you do as a tractor driver? Do you drive a tractor and haul things?

A I drive a tractor through the plant, from one plant to the other?

Q Hauling things?

A Hauling things, yes; hauling material.

Q Material?

A Yes.

Q Are you a member of Beaver Valley Lodge No. 200?

A Yes, sir.

Q How long have you been a member?

A Since they started to organize.

Q Have you been an active member?

A Yes, sir, always.

Q Were you ever on any committees, picinc committees?

A Yes, sir.

Q Did you ever appear in public at union meetings?

A Yes, sir.

Q Have you solicited or gone after members for the union?

A Yes, sir, I did.

Q Did you get a lot of them?

A Well, I signed about 1,500.

Q Yourself?

A Yes.

Q And have you ever distributed union circulars?

A Yes, union papers.

Q Did the company ever see you doing that?

A Sure, I sold them on the public place.

Q In Alequippa?

A In Alequippa.

Q And did you at any time discuss union activities or unionism with any of your bosses?

A Yes, sir, I did.

Q When was that, and what was said?

A Well, I will tell you. I switched bosses every

three months and every time I worked for Bill Sampule, I tell you, I would do twice as much work as I wass supposed to. I told him, "If you had a union—"

Q Just a minute. Will you speak a little louder and a little slower, please.

A I get you. So I told Bill, I said, "Bill", I says, "what's the idea we go to work so hard down here?"

He says, "that's the way it goes. You got to work."

So, therefore, I told him, "If we have a union up here in the plant—"

CHAIRMAN MADDEN: Slow him down.

Q (By Mr. Kleeb) Just speak slower and louder.

A So I told Bill, I says, "Bill," I says, "we have to work too hard down here."

"Well," he says, "that's the way it goes."

Then I told him, I says, "Do you think if the company would recognize the union we would have to work hard like that?"

He says, he is for the union but he can not come out in the open.

Q When was this?

A Well, I can not remember exactly, but it was pretty near every time I was work with him.

Q Do you remember talking with Superintendent Fisher in his office?

A Yes, sir, I did.

Q About the union?

A About the union.

Q When was that? 1934?

A 1934.

Q Do you remember the month, about?

A Yes, I remember the month. I remember one particular time.

Q When was that?

A It was on September 17th.

Q 1934?

A 1934.

Q Were you called into Mr. Fisher's office?

A I was called into Mr. Fisher's office, and I was called before that particular day to Mr. Fisher's office also.

Q Tell us what was said on September 17th by Mr. Fisher about the union?

A In the mill they had not started up until Wednesday and I was supposed to be off Monday and Tuesday. Nine o'clock in the morning Mr. John Bolger, he is a general foreman in the seamless finishing department, he called me up and I was in bed. He called me up and I heard the phone ring and I answered. He says, "This is John Bolger."

I says, "Yes, sir! what do you want?"

He says, "Mr. Fisher wants to see you." And he said, "You try to make it as soon as you can because Mr. Fisher is going to leave."

All right, so I run like the dickens down there at 10:00 o'clock, and I imagine about quarter after ten or 10:30, you know, I went into Mr. Fisher's office and he started talking about the union. He says, "Saturday you was in Ambridge at a union meeting?"

I says, "Yes."

He says, "Well, what for?"

I says, "Don't you know I am an American citizen in here and I am supposed to go where I please."

Q What did you say? Go slow.

A I said, "Don't you know I am American citizen? I am supposed to go any place I feel like."

He says, "Yes, but the company don's stand for that."

I says, "Well, regardless if the company like it or not I go just the same."

Well, in a long discussion he says—

Q Will you speak slower? Can't you talk slowly?

A Yes, I can.

CHAIRMAN MADDEN: Keep him slowed down.

THE WITNESS: So, in a long discussion Mr. Fisher told me, he says, "Well, I tell you, you guys can do me a favor," he says. "I tell you right now, any time you fellows asked me any kind of favor I will not do it," he says.

I says, "What's the matter?"

He says, "You boys don't do what I tell you and as far as I am concerned I don't have any use for you guys."

Q (By Mr. Kleeb) Did Mr. Fisher say anything at that time about the International Association?

A He said before that.

Q What did he say before that?

A Well, he said, "Didn't you know there was Amalgamated for 60 years?" He says, "William Green got beautiful home in Washington, sits on soft chair and everything there, and you guys pay for that and he never do anything for you."

I says, "Well, I don't know anything about that, but still," I says, "I think this union idea is mighty good thing in the country."

Q And you say Mr. Fisher talked about the union like that at times before September 17th?

A Yes, sir.

Q Has he talked to you or has any foreman talked to you about the union since September 17th?

A Oh, that was—

Q Had he talked to you any time since September 17th?

A Yes, of course last year, I don't know, I don't remember the month, I don't know if it was July or August, the assistant general foreman, Joe Pelino—

Q You are talking now about sometime in July of 1935?

A Yes, between July and August. I was to work on the 4:00 o'clock in the afternoon to 12:00 o'clock midnight, and about 7:00 o'clock Joe Pelino came into

the mill and he called a group of men at a time, six or seven or ten men at a time, and he says, "You know, it's funny to me, right here in Alequippa—" he started walking up and down, and I just listened, you know—"Why John Pafalsky came to Alequippa to start a union and my advice is don't join because the union is no dammed good."

Q Was that last summer?

A Yes, last summer, between July and August. I don't remember the month but it was between July and August.

Now, did Mr. Pelino know that you were a member of the union?

A Yes, he knew it too.

Q Did he tell you not to join or to leave it?

A He says, "If you join, that is all right, but don't pay any dues. Forget all about it."

Q Now, would you say that from September 17th, 1934, the time you talked with Mr. Fisher, and up until July or August of last summer when you talked with Mr. Pelino, were they the only times between that time that you talked with any forman or official about the union?

A Yes, they were the only times.

Q Will you state, please, what happened the day you were discharged, when it took place, and how it took place?

A It was about five or ten minutes after 12:00.

Q What day of the month?

A It was January 13, 1936. John Bolger came to me, and he says, "Angelo," he says, "you go up to coupling shop—" a different building altogether—"go up and get one empty buggy—" that is a steel buggy, you know—" and take it up by the office and leave it there."

So I went up there and got the empty buggy and take it down to the mill. You see, before we go in the

mill they got the door between the seamless and the coupling shop.

Q That is, there is a wooden door?

A No. You mean a door?

Q Yes.

A It is a wooden door.

Q So, between the seamless tube department and the coupling department there is a wooden door?

A Yes.

Q That is on hinges?

A On hinges, yes.

Q All right, go ahead.

A So, when I went up the door was closed. So I got off the tractor, opened the door, pulled the tractor on the other side, got off again, closed the door, and went up to the coupling shop. So I went to the coupling shop and got the steel buggy and came back.

Q You got the buggy and were on your way back?

A Yes. So the door was closed. So I got off the tractor and came in the mill—you have one side door on one side, a little door—I came in the mill, opened the door, pulled the tractor in, got off again and closed the door.

So I was pretty near closed the door and John Bolger came in—I don't know if he waited for me or happened to come, I don't know. So anyway they got the sign on the door, it says the way you are supposed to close and open the door.

Q I see. The sign says, "Shut the door"?

A Yes. So he says, "You read that." I did. He says, "What does it mean?" I told him. He says, "Why didn't you do it?"

I told him, "John, didn't you see me do it?" So after a long discussion he leaves me go for a while and about ten minutes after that,—

Q What did you do then?

A I do some other work in the mill.

Q Did you drive your tractor on away and take your load where it was to go?

A Yes.

Q And then you were doing some other work?

A Between that time.

Q Now, what happened?

A About ten minutes after that John Bolger and Bill Sampule came up to me and John Bolger told me, he says, "Angelo, did Bill tell you last week to close the door?"

I said "Yes."

He says, "Did you close it?"

I says, "Yes." Bill Sampule denied it.

So, well, John Bolger said, "You already got a week off anyway."

I says, "Yes."

And he walked away, you see. About ten minutes after that Joe Pelino, his assistant general foreman, came up to me and he said, "Angelo, John Bolger wants to see you in the office."

So I drive the tractor close to the office, got off the tractor and go in the office. Well, when I went in the office he says, "Angelo, as far as I am concerned you are finished; you are done."

Q Did you ask him why?

A I says, "Why?"

Q What did he say?

A He says, "You don't do what I tell you."

Q You didn't do what he told you?

A No.

Q Did he say anything about closing doors?

A Yes.

Q What did he say about that?

A He says, "Bill tell you to close the door last week and you don't do it."

I says, "Last week was cold weather and if the door was open that man in the mill would freeze to

death. Therefore I closed the door because nobody ever complain about it." My answer was that.

I says, "John, you are the boss; you do what you please, but I want to tell you one thing. If I was the boss I be dammed if I fire the man without no reason whatever."

And John said, he said, "I will fire you but I am not the king, but I fire you anyhow and I think I get permission of the superintendent."

Q You mean he said he was going to fire you anyhow and he thought he could get the permission to do it from the superintendent?

A Yes, he did, sure. He wrote some kind—I don't know what he wrote on the sheets of paper, and he told me, he says, "You go up to the office and get your time."

All right, I went up to the time office and the timekeeper was there and he said—I told the timekeeper, I says, "Mr. John Bolger fired me! give me my time."

He said, "I can not give you no time." He says, "John Bolger is supposed to give you the time."

Well, I says, "He sent me up here." So the timekeeper called up in the mill and he says, "Angelo Razzano is up here and I don't know what he wants."

Well, he says, "I fire him." I don't know what he said to the foreman, and he said, "The timekeeper told him, 'You got to give him a slip, you know'."

I heard the timekeeper say to him—I heard Bolger say it was against the rules, he can not give me any kind of slip.

Q He said it was against the rules to give you a slip?

A Yes.

Q And did you ever get a slip?

A Not that day, no.

Q Did you get one later?

A The next day.

Q Do you have it?

A The next day I went up to the time office and they gave me the time.

Q Did you get the slip from them?

A No, they give me the time. I didn't get no slip.

Q You never got a discharge slip?

A. No.

Q Now, you stated that you got a week off before. Was that for doing something?

A Well, yes, I make a little scratch on a machine.

Q With your tractor?

A With the tractor.

Q You have been a tractor driver for some long time?

A Four or five years.

Q How many other tractor drivers do the same kind of work that you do?

A In my department there is five.

Q Are you the oldest tractor driver?

A I think I am the second one.

Q The second oldest?

A. Yes.

Q Does your job require that you do laboring work or sweeping?

A No, sir.

Q Had you been doing that work, sweeping and laboring?

A Yes, I did it for one week.

Q For one week?

A Yes.

Q Was that the week before you were let go?

A It was from December 9th to December—well, it was five days, anyway.

Q You were driving the tractor at the same time?

A Yes.

Q Were the other tractor drivers given this laboring work to do?

A No, sir.

Q Why were you given the work, if you know?

A I will tell you just the way it happened. Monday night at midnight I reported for work and Bill Sampule told me, he says, "Do you see what I got here from the boss? I got to keep you busy."

Q What did he show you when he said that?

A You see, the general foreman always leaves a note to the turn foreman to tell what he has to do between the time he starts until the time he finishes.

Q And Bill Sampule had a paper in his hand which was a note apparently with instructions to tell you to do something?

A Yes.

Q What else did Sampule say to you then?

A He says, "I got orders to keep you busy."

I says, "What do you mean, keep busy? I am busy right along."

He says, "Whenever you got nothing to do on the tractor my orders are right here and I am supposed to put you to hooking up and doing some other work, and my orders are I got to keep you busy."

I says, "We never did that before."

He says, "Angelo, do you know you are on the spot?"

Q Repeat that. He said what?

A "Didn't you know, Angelo, that you are on the spot?"

Q "Didn't you know that you were on the spot?"

A Yes.

Q Did he say anything else?

A That is all.

Q And you say you were kept busy for a week?

A Yes.

Q And then after that time they did not keep you so busy doing that kind of work?

A After that time the mill shut down.

Q Oh, the mill shut down?

A Yes.

Q And when you came back to work did you just drive the tractor then?

A When I came back to work again I worked five days, I think more than five days, about seven days, 12:00 o'clock midnight to 8:00 o'clock in the morning.

Q What, briefly, was the extra work that you did? What did you do? Sweep?

A Sweeping and hooking up for the crane.

Q Do you remember the Employee Representation Plan election in June of 1935?

A Yes, sir.

Q They had an election didn't they?

A Yes, sir.

Q Were you working at that time?

A Yes, sir.

Q Did you vote?

A No, sir.

Q Tell us what happened on that day at the primaries, and then at the general election.

A At the primary election I met Joe Pelino on the floor and he told me, he says, "Angelo, you going to vote?"

I said, "No, Joe."

He says, "What's the matter?"

I says, "I don't pay five years of taxes." I says, "I'm not supposed to vote before I pay my taxes." It was a joke.

Q You were just joking and said that you had not paid your taxes and therefore you could not vote?

A Yes.

Q What else was said?

A That is all for that day.

Q Did you vote at the primaries?

A No, sir.

Q What else happened?

A On the final election John Bolger came up to me, I don't know what time it was, but at any rate he says, "Angelo, did you vote?"

I said, "No."

He says, "Are you going to vote?"

I said, "No."

He says, "What's the matter?"

I says, "John, to be honest with you, I no got any use for the company union."

Q You haven't got any use for the company union?

A Yes. He says, "Well, I tell you, it is my duty to tell you to go vote," he says, "but if you not going to vote, sometime I need new machinery or something and the company they don't buy me because they claim I got a bunch of Communists down at the mill."

Q Is this correct, that he said that whenever he, as foreman—was he foreman?

A He is general foreman.

Q When he wants to get some new machinery from the officials for his department they tell him, "You got a bunch of Communists in your department"?

A Yes, because we don't vote for the company union.

Q Why?

A Because we don't vote for the company union.

Q Did Jones & Laughlin ever fire since you have been a tractor driver?

A No, sir.

Q Did they ever lay you off for anything you did as a tractor driver except that one week?

A No, sir.

Q Did the foreman or any of the foremen ever tell you you were a good tractor driver?

A John Bolger told me personally.

Q What did he tell you?

A He says, "Angelo, you are the best tractor driver I got in the mill."

Q How long ago was that when he told you that?

A Two or three years ago.

Q Did the company or the foreman ever complain to you about the way you drove your tractor?

A Yes.

Q Except that time?

A You see, the only complaint we had, just like I said, we had too much work and we can not do it all at one time, so we had to speed up a little bit, go a little too fast, and the boss says, "Slow down. It is not necessary to go that fast."

Q But he told that to all the other tractor drivers, didn't he?

A Yes, sir.

Q You were not picked out? You were not the one picked out? You were not the only one told that, were you?

A No, the other tractor drivers were told the same way.

Q They were just general complaints?

A Yes.

Q Are any of these other tractor drivers still working?

A Yes, sir.

Q Are they still working?

A Yes, sir.

Q Has anybody been hired, do you know, to take your place?

A Well, they took a younger boy from the test crew for my job.

Q Had he driven a tractor any time before that while you were driving?

A No, sir.

Q Now, about this doorway that you had to drive through and that you were accused of not closing, I judge that is a door that closes in a building to keep out the cold air?

A That is right.

Q So that when you go through the door you are on the outside of the building?

A Yes, sir.

Q In another department?

A Yes, sir.

Q And the reason for closing the door is so the men do not get cold inside, to keep out the winter air?

A That is right.

Q Did you notice any other tractor drivers during the winter leaving the door open?

A I want to be honest with you; everybody leaves the door open, even myself.

Q Evehybody?

A Everbody.

Q So that every tractor driver now and then would leave the door open?

A Well, I don't know how they do now, but when I used to work there every tractor driver used to leave the door wide open and they did not have no complaint about it.

Q And these tractor drivers who are still working for Jones & Laughlin have been guilty of leaving the door open many times, is that right?

A That is right.

Q Were you ever told by William Sampule, the turn foreman, that you were on the spot for union activity?

A Yes, sir, plenty times.

Q Plenty of times? Have you been told that since July of last year?

A Yes, sir.

Q What did you earn as a tractor driver? What were you earning?

A $4.80 a day, eight hours.

Q An 8-hour day at $4.80 a day? That is 60 cents an hour, is it not?

A Yes.

Q You say you were discharged January 13, 1936. Have you worked any since that time?

A No place.

Q That was January 13, 1936?

A Yes.

Q Have you had any income of any kind since that time?

A I no got no income.

Q No income?

A No.

MR. KLEEB: Any questions?

CHAIRMAN MADDEN: No.

EXAMINATION BY MR. CARMODY

Q (By Mr. Carmody) How long did you work there?

A I worked in the seamless tube since 1928 up to January 13, 1936.

Q What did you do in the seamless tube?

A I was driving a tractor.

Q Did you drive a tractor in the seamless tube?

A Yes.

Q Then where did you drive the tractor when you were discharged?

A I was to go from seamless tube to the coupling shop, a different department, and get one empty buggy, a steel buggy.

Q Yes?

A I went up there and got the steel buggy to bring it down, what the boss told me, by the office. So when I went up, when I came down the door was closed the way I said before. So I got off the tractar, came in

the mill, they got a little side door there, opened the door, pulled the tractor in the mill, got off and closed the door. I was pretty near half way to closing the door and John Bolger came up to me and he says "Did you close the door?"

I said, "John, din't you see me close the door?"

He says, "Yes, but did you do it?" I don't know if he meant that particular day.

Q Or some other time?

A Or some other time. After long discussion he leave me go. About ten minutes after that John Bolger and Bill Sampule both came up to me and John told me, "Angelo, did Bill tell you anything about closing the door last week?"

I says, "Yes."

He says, "Did you close it?"

I says, "Sure." And Bill Sampule denied it, said I did not close the door.

John says, "You already got a week off."

I says, "Yes."

He says, "I can not give you a week off any more." He walked away and went in the office.

About ten minutes after that he sent his assistant, Joe Pelino, after me again, and he said, "Angelo," he said, "they want to see you in the office."

So I went in the office and John was sitting at the desk, you know, and he said, "Angelo, as far as I am concerned you are finished with J & L."

I says, "What for?"

He says, "You don't do what I tell you."

Then I told him, "John, as far as I am concerned, if I was boss I would not fire a man without any reason at all."

He says, "I am not the king but I will fire you anyhow and I think I will get permission of the superintendent to fire you", which they did. Then he said, "You go to the time office and get your time."

I went up to the time office and the timekeeper, Jack, told me—I told him, "John fired me and gave me my time."

He says, "Where is your slip?"

I says, "I no got any."

He says, "I can not give you your time without a slip."

I says, "I don't know; this is the first time I get fired; I don't know anything about it."

Q You never got discharged before at any place?

A No, sir. So Jack called up on the phone in the mill and they talked about me. He said, "Angelo is up here and I didn't know what he wants." Somebody over the phone said, "Give him his time."

He says, "How about a slip? He is supposed to get some kind of a slip." Then I heard Jack, the timekeeper, say, "That is against the rules, you know."

Anyway, he says, "You wait a while and I get everything straightened out."

I says, "Well, you can not do any more than that. You get the time ready and I be back tomorrow morning", which I did.

Q Now, I just want to ask you one or two questions. How many places did you work in this country before you worked for J & L?

A I worked four or five different places.

Q You never got discharged?

A Never got discharged.

Q You worked very steady at J & L? When your shift came you worked?

A Yes, sir.

Q Did you ever lay off without asking the boss? You worked every day?

A Every day.

Q Everybody called you Angelo, your first name?

A Angelo, yes.

Q You have a good many friends?

A Yes.

Q The bosses like you?

A They used to like me.

Q Do you think the reason they don't like you is because you were prominent in the union and tried to organize?

A That is it, just exactly.

Q You do not think there was any other reason?

A No other reason at all.

Q Were you as good a tractor drive after you joined the union as you were before?

A Just the same.

Q Did you pay attention to your work just as well?

A All the time.

Q You did not pay attention any better, did you?

A Better what?

Q I mean, pay better attention after you joined the union?

A I used to watch myself because I was watching my job. Before I was on the company's side and the company can not fire me. This time I belong to the union and I need to watch myself.

Q So you did try to watch your job?

A Better after I joined the union than before.

Q Where did you get so smart about all that business about having to watch yourself?

A It came out of my head.

Q It came out of your head?

A Yes.

Q Did you ever hear that in some place where the employer does not want a man to join a union he watched his work more carefully and tried to find an excuse for discharging him? Did you ever hear that any place?

A Well, not as I know of. The first time I heard of it was at J. & L.

MR. CARMODY: All right.

MR KLEEB: All right, Angelo, thank you.

(Witness excused.)

MR. KLEEB: Mr. Lange?

GUS A LANGE, called as witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kleeb) Where do you live?

A 1616 McMinn, Alequippa.

Q You are a tractor driver for J & L Steel Corporation?

A Yes, I have been since 1927,

Q And still are?

A Still driving a tractor.

Q You know Razzano who just testified?

A Him and I buddied together for about, well, from 1928 up until the 13th day of December when he got let go.

Q Was he a good or bad tractor driver?

A Nobody had any kick against him.

Q Have you had a conversation about him with any official of the company since he has been discharged?

A Yes, I talked to his turn foreman one day after he was discharged.

Q What is his name?

A You know, if they discharge an experienced man on the job it makes the rest of the boys there work harder, it just doubles up on them, you know. I says, "Bill, what's the matter with your tractor service?"

He said, "Rotten."

I said, "Boy, don't I know that, Bill. That just doubles my work up, pretty near half what I had to do." Then I asked him, "Bill, why don't you try to get Angelo back here again?"

Q Angelo Razzano?

A Yes. And he said, "Angelo will never get back in here no more on account of his union activities. He was a good worker and a steady worker—" Angelo never lost no time— "but," he said, "it is through his union activities."

I tell you how I got at that, you know; I pumped him for that. I said, "Bill, what was Angelo let go for?"

He said, "Leaving that door open."

I said, "Bill, I have left that door open a hundred times."

Well, he said, "You know, it is more for his union activities, but that is what the slip called for, and open door."

MR. KLEEB: That is all. Any questions?

EXAMINATION BY MR. CARMODY

Q (By Mr. Carmody) You said Razzano was always a good workman?

A A good, steady, reliable worker and he knew his work. You did not have to tell him where to go. It is like running a railroad. I was a railroad man and you did not have to ask anybody what to do, and it is like that working in the mill.

Q Would you say the man who replaced him was just as good as he was?

A He can not come up to him. In the first place he does not know anything about a tractor except to get on and ride around and go sit down. He does not get the work done and it just doubles up the work on me and the other tractor drivers.

CHAIRMAN MADDEN: We will recess until 10:00 o'clock tomorrow morning.

(Whereupon, at 4:45 o'clock p. m., a recess was taken until tomorrow, Tuesday, March 3, 1936, at 10:00 o'clock a. m.)

CERTIFICATE

This is to certify that the attached proceedings before the NATIONAL LABOR RELATIONS BOARD in the matter of:

CASE NO. C-57

NAME Jones & Laughlin Steel Corporation, and Amalgamated Association of Iron, Steel & Tin Workers of North America, Beaver Valley Lodge No. 200.

PLACE Pittsburgh, Pa.

DATE March 3, 1936

were had as therein appears, and that this is the original transcript thereof for the files of the Board.

Smith and Hulse
(Official Reporters)

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the Matter of: No. C-57

Jones & Laughlin Steel Corporation

and

Amalgamated Association of Iron, Steel & Tin Workers of North America, Beaver Valley Lodge No. 200.

Court Room No. 6, Post Office Bldg., Pittsburgh, Pennsylvania, Tuesday, March 3, 1936.

BEFORE:

J. WARREN MADDEN, Chairman, National Labor Relations Board.

JOHN M. CARMODY, Member, National Labor Relations Board.

APPEARANCES:

ROBERT BURNHAM WATTS, Associate General Counsel and

ROBERT H. KLEEB, Regional Attorney, appearing for the National Labor Relations Board.

ALEXANDER H. SCHULLMAN and

AARON SAPIRO, 704 Grant Bldg., Pittsburgh, Pa., appearing for Beaver Valley Lodge No. 200.

EARL F. REED,

JNO. E. LAUGHLIN and

DONALD W. EBBERTS, (Thorp, Bostwick, Reed & Armstrong), 2812 Grant Bldg., Pittsburgh, Pa., appearing for Jones & Laughlin Steel Corporation.

PROCEEDINGS

CHAIRMAN MADDEN: Proceed.

MR. KLEEB: Mr. Cox, will you be sworn?

RONALD B. COX, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kleeb) Will you state your full name to the reporter, Mr. Cox?

A Ronald B. Cox.

Q Where do you live?

A 1611 Davidson Avenue, Aliquippa.

Q Were you employed by the Jones & Laughlin Corporation?

A I was.

Q What did you do?

A I was employed as a crane man.

Q Is that a hoisting crane man?

A Yes, sir; electrical overhead.

Q How long had you been a crane man for the Jones & Laughlin Steel Corporation?

A I had been crane man for approximately two and one-half years.

Q Prior to that time, how long did you work for the company?

A Five and a half years all told, service.

Q That is, since what year?

A 1928.

Q What did you do before you were a crane man?

A I was catcher in the tin mill.

Q For five years?

A Yes, sir.

Q Did you work for any steel companies prior to 1928, when you went with Jones & Laughlin?

A Yes, sir; the Wheeling Steel Corporation.

Q The Wheeling Steel Corporation. Any others?

A Pressed Steel Car.

Q Were you ever discharged for incompetency at any of those places?

A I never was.

Q Were you ever discharged from the Jones & Laughlin Steel Corporation up until this last time?

A No, sir.

Q Have you ever been discharged from any job up until Jones & Laughlin fired you?

A This was my first discharge.

Q This was the first time you have ever been discharged in all your life?

A Yes, sir.

Q From any job?

A From any job.

Q As crane man, you require a certain amount of skill, do you not?

A Yes, sir; it is classed as semi-skilled labor.

Q What was your reputation in the mill as a crane man?

A I think I can say, without boasting, I had the best record of any crane man in there, as far as safety was concerned, and promptness and being on the job.

Q Did you have any unsafe practices charged against you?

A Never to my knowledge, and if there had been any, I think I would have heard about it.

Q Did you ever receive any safety awards from the J & L Company?

A I did.

Q How many of them?

A Three.

Q What were they?

A Two watch fobs, one in the tin mill department

and one in the seamless department and one an automatic pencil.

Q Were any of those received while you were a crane man?

A Yes, sir; one watch fob.

Q One watch fob as a safety award as a crane operator?

A Yes, sir.

Q That is, in the past two and a half years?

A Yes, sir.

Q (By Chairman Madden) How many men were there at the time you received this award? You were one of a group of how many?

A About 52.

Q Do you know how many awards were given at that time?

A I think the whole department received the awards. That was for a perfect record for the whole department.

Q So that every one who was doing that work received an award?

A Yes, sir; that is correct.

Q (By Mr. Kleeb) You said that you had no unsafe practices charged against you. Do you know of other crane men having charges against them?

A Yes.

Q Would you say that a few of them, or most of them, had unsafe practices charged against them?

A I would say that most every one in there had had them.

Q Are there crane men still working there that have had such unsafe practices charged against them?

A Yes, sir.

Q Did you ever violate any other rules or standards of the company?

A No, sir.

Q How many crane men would you say there are in this seamless tube department where you worked?

A Approximately 52.

Q About 52 crane men at the time you were discharged?

A Yes, sir.

Q January 6, 1936?

A 7th.

Q January what?

A The 17th.

Q The 7th?

A Yes, sir.

Q Approximately how many cranes were those 52 men operating?

A 22 cranes.

Q Were there any other crane men who were fired at the time you were let go?

A No, sir.

Q Has anybody replaced you at the crane that you were operating?

A Yes, sir.

Q One man or more than one, if you know?

A One man.

Q One man?

A Yes.

Q Was the crane that you were assigned to operate any more difficult to operate than the cranes that other men were operating?

A It was.

Q Was it the hardest crane to operate?

A It is the hardest crane to operate. When I was discharged, they had to send to another department to get a man to operate it.

Q Why was it the most difficult crane to operate?

A Well, it is in the 30 inch round mill, and they allow 90 minutes to change the mill, and they specify

something like 85 lifts in 90 minutes. That is almost a lift a minute, and a man has to be very experienced to do that without injuring some one.

Q How long had you been assigned to that crane; how long before you were fired?

A Five months.

Q Five months, and you had been regularly operating the most difficult crane in the seamless tube department?

A Correct.

Q Considering all these crane men that you mention, how did you stand in regard to seniority?

A I would say there were about one-third of them that had been employed in that department since I was there.

Q So that taking one-third of the number of crane men, that is about where you stood?

A In the department there. Considering my entire service, I was one of the oldest.

CHAIRMAN MADDEN: Let us get this straight.

Q (By Chairman Madden) Do you mean that you were at the bottom of the top third or at the top of the bottom third?

A I mean I was at the top of the bottom third.

Q (By Mr. Kleeb) Will you relate, please, the circumstances under which you received your notice to quit, or your discharge notice?

A I went to work at 4 o'clock on the usual turn. My general foreman was there, which was very unusual, as he is always in the office at 4 o'clock, and he places his men. He switches his men around every day. Few of them have a steady crane. 50 per cent of them are switched from one place to the other, and I saw him there at the time I went in. I thought it was peculiar. I had been watching myself very closely, because when the other boys who had been active in the

Union had been discharged, I thought they would be watching me closely, too. I went up on my crane, inspected it thoroughly. I got down, and they blew the whistle as soon as I got on the ground, at 4 o'clock, for me to come and lift. I went up and worked my hooks to make a lift, and the foreman followed me up the floor, and he signaled me to come back down to the steps, which I did, and he motioned for me to come down to the ground. I went down. He said, "Did you inspect your crane?" I said "Yes". He said "Did you try your limit stops?" I said "No, sir." He said "Go back and get your check and go home. You can come back tomorrow, and in the meantime, we will finally dispose of the case."

There is one thing that I want to explain——

Q. That is the difference between the limit stops and the inspection?

A No; the time that this subject came up about testing the limit stops on the hooks.

Q Just a minute, so that the Board will understand that. Will you explain briefly to them what you mean by what the difference is between trying a crane and inspecting a crane?

A Well, the limit stop is a mechanical switch that is operated by a weight, and when your hooks come up and hit this weight and release the tension, the switch automatically shuts off, so that the hoist cannot go any higher and break the cables. The result would be that the hooks would drop down on the floor and probably injure somebody or do some damage. This limit stop is actuated by hand, so that you could look at it and see that it was making the contact, as I always had done; but previous to this the foreman had suggested that we hit them with hooks to see if they worked. I said at the time that I thought that was an unsafe way of doing it, because if the controller would stick while you were trying it in that fashion, you would get into

trouble and have an accident. He said at the time "There is a whole lot in that," and that is all that was said, and I never had, while I worked there, tried the limit stops in that fashion.

Q (By Mr. Carmody) Do you know whether that foreman had ever been a crane operator himself??

A I know that he cannot operate a crane.

Q (By Mr. Kleeb) Had you ever received any definite instructions as to how to operate these cranes? Were there written instructions of any kind?

A The only instructions that I received in regard to that was a man who broke in. I was there two weeks doing that.

Q What instructions did he give you?

A He told me to go over my crane and look for loose bolts, take the cover of them, the limit stops, and actuate it by hand, and that he considered that a thorough inspection.

Q So that the crane man told you to do what you really did, and the foreman, who had never operated a crane and did not know how, told you that there was something else to do?

A Right.

Q Continue with your story, please, about your discharge.

A From the time he told me to go and get my check, I didn't say any more. I went up and changed my clothes in the locker room, which took me about twenty minutes. I went from there up to his office. We hang our checks in his office. They are hung up there on a board. When I got to the office, which has a glass door in it, the turn foreman, Mr. Krause, saw me coming, and he stepped over and put his back against the door. At the time I was angry. I just pushed the door open and walked into the office, and Mr. Hussy, the foreman that dismissed me, was talking on the phone, and I got this much of his conversation: He said

"He didn't try his limit stops. Is that enough?" Then he looked up and saw me, and he said "I can't talk to you now. Mr. Reeves is on his way," and hung up.

Q Do you know who Mr. Reeves is?

A He is the superintendent of the seamless department.

Q So that Mr. Hussy on the phone you overheard him say what to Mr. Reeves?

A He said "He didn't try his limit stops. Is that enough?"

Q "Is that enough?"

A Yes.

Q Go ahead.

A And he turned to me and said "What do you want?" I said "If I am fired, I want my money." He said "I don't know whether you are fired or not. You come in tomorrow at 4 o'clock, like I told you, and I will make a final disposition of this case," and I told him, if I was fired, I didn't want to make a trip in there tomorrow. He said "You don't have to make it; I will send my car for you," which he did. I was there at 4 o'clock, and he had my time all made out and handed it to me.

Q Did you receive a discharge slip?

A I did.

Q Where is that?

A I had to hand that in to get my money.

Q Both parts of it?

A Yes, sir.

Q (By Chairman Madden) What did it say on that?

A It gave no reason. I don't remember the exact words of it, all that was on it. I know that there was no reason on it.

Q (By Mr. Kleeb) Did you ask any foreman or other official the reason why you were discharged?

A I did not.

Q Did you have any discussion about the matter with any employee representative, and if so, state the circumstances.

A Yes, sir. After he gave me my time slip to go up and get this, I came out of the office, and two company representatives, Mr. Shorts and Mr. Gadio, approached me and asked me what the verdict was.

Q Go ahead.

A I told them that I didn't care to talk to them. I kept on walking.

Q How did you imagine that Mr. Shorts and Mr. Gadio knew about you being on trial, so to speak?

A I had no definite idea of how they knew it.

Q What is your supposition about it?

A I expect that, through the office, either my foreman or the general manager or the superintendent, they had notified them that I was going to be discharged before I knew it.

Q Are these two men, as employee representatives, rather close to the foreman and management?

A They seem to be. They are always in the super's office.

Q You are a member, I presume, of Beaver Valley Lodge No. 200, are you not?

A Yes, sir.

Q How long have you been a member?

A Since about August, 1934.

Q And that is since about the inception of this organiaztion, is it not?

A Yes, sir.

Q Have you been an active member?

A I have been very active.

Q And have you attended meetings regularly and publicly?

A Yes, sir. I have done everything I could for

the organization. I campaigned and solicited members for it. I sold tickets and passed out literature, and I even went to Midland to help Mr. Payne, who testified here yesterday, when he was organizing Midland, and I went down there for the time I could spare from Aliquippa to help him there.

Q At the time you were so active, that is, the time in the beginning when this was being organized, did your job change; was there any change in your job back in 1934, do you recall?

A No; there was not.

Q Now, will you state in your own way the reason that you think the company discriminated against you, which ultimately led to your discharge?

A Will you repeat that?

Q I say, will you state in your own way the reason that you believe you were discriminated against because of your activity for the Beaver Valley Lodge No. 200?

A Yes; I was called into the superintendent's office——

Q Who was that?

A In 1934.

Q Who was that superintendent?

A Mr. Fisher—the general manager, rather—into the general manager's office, Mr. Fisher and he gave me a talk, an anti-union talk. He told me it was a racket; I was just paying my money to a bunch of big fat guys that sat back and smoked cigars and at the time I was back in my rent of the company's house, and he told me if I was going to persist in affiliating myself with this Union, they could not tolerate my back rents, that they would have to put me out of the house, and the local merchants would not extend any credit, that he would see to that, that Jones & Laughlin had determined to fight this case to the highest court, and they

would close the plant down and throw the key in the river before they would recognize an outside Union; that he had intended to promote me, and by my affiliating myself with the Union I was not helping my standing. All the time he was questioning me, he was writing down something. I couldn't see what he was writing, and he told me, he said "Cox, any time you change your mind, come in and tell me, and I will tear this up". So I presume it was a black-ball.

Q (By Mr. Carmody) Who said that?

A Mr. Fisher, general manager of both the seamless and welded tube departments.

Q When was this?

A In 1934. September 12th, I think is the correct date. I made an affidavit to that effect at that time.

Q (By Mr. Kleeb) At that time, or shortly before your activity in the organization of this Union, were you receiving as much time on the cranes as were the other men? Was the time being distributed more or less equally prior to this organization?

A It was.

Q Did you notice any difference in the time you received to work and the time that the other men received?

A Yes, sir; especially in the last few months in the service.

Q Did you ever have any occasion to check the time records to see if you were short timed?

A I didn't check the time record, but there were four of us workmen on the same job, riding to work together in the same car. When we would go out in the morning, those three men would work and I would have to walk home. In the month of December, to be specific, I got six days and the men I rode with averaged anywhere from fifteen days on up; and I reported every day for work.

Q Did you make any complaint about being short timed as compared with the time of the other crane men?

A I did.

Q To whom?

A To Mr. Hussy.

Q And what was the reply that he gave you?

A He told me if I didn't like it, I could quit.

Q And you stated that you were transferred to the toughest crane in the plant, that is, the toughest of the 22 cranes?

A Yes, sir.

Q Was there any reason given for that, or do you have any reason for thinking why you were transferred to that crane?

A I do not. The man that was on that crane was taken off and put on a light job and I was put down there.

Q Hussy was your foreman; is that right?

A General foreman.

Q He, of course, would have caused to give instructions to these men as to what to do on their particular turn?

A Correct.

Q Were they given orally; did he give those instructions orally to those men?

A Yes.

Q Did he give them orally to you?

A No; he always left a note for me.

Q How do you account for that?

A Well, he didn't speak to me, unless it was absolutely a necessity, since the formation of this Union.

Q And he is the man who has always talked anti-union to you?

A One of them.

Q One of them?

A Yes.

Q Do you recall the employee representation plan election in June, 1935?

A Yes, sir.

Q Will you state what, if anything, happened at the primaries or general election regarding your position?

A At the primaries, they sent a man up on the crane to relieve me to go to vote. I told him I was not going to vote, and they said "Mr. Hussy said that you should go and vote." "Well," I said "you go back and tell Mr. Hussy I am not going to vote; I don't care to." And I didn't vote, and on the general elections they didn't ask me to.

Q During your term as a crane man, had they had frequent occasion to complain about your work any more than about the other crane men, if you know?

A Not as much.

Q Not as much?

A No.

Q So that the only reason you have for your discharge, that you know of, is this one incident of not testing the crane; and this foreman was not even a crane man; and is not that what it amounts to?

A That is the only reason.

Q Were you ever given a hearing before any higher official about your case?

A No, sir.

Q Were you ever permitted to defend yourself?

A No, sir.

Q What were you earning at the time you were discharged?

A $24.00 a week, at the rate the mill has been working.

Q Were you getting an eight hour day?

A Yes, sir.

Q What did it average—about $4.48 a day?

A That is correct.

Q Since January 7, 1936, have you been employed elsewhere?

A No, sir.

Q Have you had any income?

A None whatsoever.—only some furniture I sold.

Q Well, that was your own furniture?

A My own personal furniture; yes, sir.

Q Did you sell that to get funds?

A I sold that to get enough to buy food and eat with.

Q Are you a married man?

A I am.

Q Any children?

A One.

Q How old?

A Nine years.

MR. KLEEB: I would like to call the Board's attention at this time to the testimony of Mr. Cox in the hearing involving the same company and the same Union before the Old Steel Board, which was held in November, 1934. This same witness testified at that time.

Are there any questions from either member of the Board?

Q (By Chairman Madden) When you were told to come back at 4 o'clock the next day and you did go back, tell us what happened then?

A I walked into the foreman's office. I was taken there in his car by his assistant. I walked into the office. He had my time slip made out and he said "Here is your time Cox. I am going to make an example of you." He said "Now, you can beat it." And I took it and walked out.

Q (By Mr. Carmody) How long had you been working for Jones & Laughlin?

A Approximately seven years all told. Nine months I worked for them; I was away eighteen, and I came back, and I have been there over six years this time.

Q Have you lived in Woodlawn all of that time?

A I worked a year before I moved over this last time. I have been there five years—almost six—this time.

Q That is where the company's houses are?

A Yes.

Q In Woodlawn?

A Yes.

Q And you have had a good work record? You have never been discharged. Have you ever been laid off for violation of rules?

A I have never served a day's time.

Q What effect did you think this discharge of yours and of these other men who are complainants here has had on the attitude of the men in the mill towards the organization?

A It has had a great detriment to their morale, in my opinion. I know it has. In our department—I don't like to boast, but I think I was looked on as King Pin of the Union in that department, and I am the one they got, and I know that the men who are down there are going to be very careful about affiliating themselves with any outside organization from now on.

Q Do you think they are less likely to go to meetings of the Union if they know that men are being discharged who have been active in the Union?

A I do. Friends of mine now won't talk to me on the street, where they can be seen. They are afraid to be seen talking to me since I have been discharged.

Q Do you think that the men in the mill, who are not members of the Union, believe that you were discharged for inefficiency or failure to apply a safety rule?

A No; I don't think so.

Q What do they think?

A They think I was fired for Union activities. I don't think there is any doubt in any of the men's mind in the department that I was fired.

Q How do you know that?

A I have talked to many of them. They don't want to be seen with me on the streets, but they come up to the house and sympathize with me and tell me they know I was fighting for the right thing—men that don't even belong to the organization.

Q Do you think that even the representatives on the employees' representation plan think that you were fired for inefficiency?

A No; they don't think that.

Q Is it easy to fool men in a mill about the reason for a discharge?

A It is not. Men working together like that know each other's character and their working abilities.

Q They know when a man is a poor workman, generally, do they not?

A They certainly do.

Q And they will not make much of a fight for him, will they?

A No, sir.

Q Now, in your opinion, based on your experience in the mill and your experience as a resident of Woodlawn, which is the mill town, and your activity in the Union, what do you think would happen if the company made a public statement to the effect that their employees might join any organization of their choice without being discriminated against in their job, and put up notices in the mill, so that the men could read those notices and believe them; what do you think would be the effect of that on the men in the mill?

A I think that the thousands that had signed the pledge cards in the Union and were frightened out of

it, practically all of the balance of them would jump right into a real bona fide organization right away. That town is trying for organization. There is only one thing holding it down over there and that is that J & L pressure.

Q Is it not true that among nine or ten thousand men there are always some men that do not wish to join a labor organization?

A That is true.

Q Would they be a majority, do you think, if the men were free to do as they pleased in regard to an organization of their own?

A They would be decided a minority.

Q Do you think that you could be as efficient and as safe a crane operator if you belonged to a labor organization to which other men in the mill belonged, and which was dealing with the company through collective bargaining with respect to hours, conditions of labor, safety rules, etc.?

A I feel that I could be a better workman, for the reason that there would be a better atmosphere in the plant. There would not be all of this dissension that is in there now, and a man could come to work and feel as though he really wanted to do his job. I think that would be true of every one in the plant. Now, you go out there and you are all pins and needles all the time. If you do belong to an outside organization, you have to watch every little move you make, and I don't think that contributes any to safety.

Q Do you think there is a spite of cooperation among the men down there, if they were free to exercise it?

A I do.

MR. CARMODY: That is all.

Q (By Mr. Kleeb) Mr. Cox, you have discussed these discharges. Now, you did talk with other members of the Union, did you not?

A Yes, sir.

Q Did you, from your conversations, get any idea at all about being watched closely, more closely than you had been in the past, by the officials? In the conversation with the men, did you learn that they were being watched?

A All men that are known members.

Q That are what?

A Known members.

Q That are known members of—

A Of the organization, feel that they are being watched, and it is only a matter of time, I think, that —perhaps, I shouldn't say this, but I think the outcome of this case will determine that quite a bit.

Q Do any of the men that are still working there think that they are being watched, and have they said so to you?

A Yes; they did. I know one specific instance. The gentleman who testified here yesterday, Mr. Lang, has been transferred to a much harder job than he had before his joining of the organization. They just tried to force him to quit. I think they did that with all of of us. I know they tried to force me to quit when they gave me that last job and shortened my time. They thought I would get disgusted and quit.

Q (By Mr. Carmody) I wonder if you made it clear enough as to what actually goes on in the mill, when the mill changes. You say it takes 90 minutes to change the mill, and in those 90 minutes you have 85 lifts to make. I wonder if you have made that clear. What do you mean by changing the mill?

A The rolls are taken out and new rolls put in.

Q Well, let us put it this way: The mill has finished rolling a certain size; is that it?

A That is it.

Q A shape, or whatever it may be. It has finished that size?

A Yes.

Q And then orders come for another size. That requires an entirely different set of rolls; is that right?

A That is correct.

Q So you take all of the rolls out of the housing, all the old rolls and lay them away and bring new rolls and put them into the housing in the order in which they have to be in order to roll the new order; is that it?

A That is correct, but in this instance, there would be only two rolls. They change one mill at a time. There are only three mills, and it takes approximately that many lifts to change the mill, because there is so much to do before you get to the rolls. The screws come out and the housing, riders, bearings, and things of that sort. The couplings have to be taken off, the mill uncoupled, the spindles taken out, the spindle bearings removed, and things of that sort. There are approximately that many lifts to change.

Q And all of those parts are so heavy that man cannot lift them; they must be lifted with the crane and put in their proper place, and the other pieces are brought in and set in properly?

A Correct.

Q Is it not true that a great deal depends upon the skill of the crane operator with respect to locating the rolls in their proper places in the housing to make for the smallest possible adjustment?

A Yes, sir. At some places where those riders would come in you don't have an eighth of an inch in each side of them to fit them in.

Q High above the mill is the crane itself, into which you are sitting as the crane operator?

A I would say eighteen feet, and over another span are the mills spread.

Q How many different sets of rolls in this mill?

A There are three sets of rolls, but the span, the fartherest one away from me, is about forty feet.

Q So that all together in approximately 90 minutes you make 85 lifts of heavy pieces that have to be placed in their proper places in the machinery?

A That is correct.

Q Is it not the same as lifting the ordinary load of rods or bars which can be gathered up almost any place and swung and swayed and put up within the space that the rolls can be put in?

A There is quite a difference.

MR. CARMODY: All right. That is all.

Q (By Mr. Kleeb) Mr. Cox, it has been testified here in the past that after the state police came in to Aliquippa some time in October and November, 1934, there was a sort of change that took place down there, as far as the meeting of the people was concerned and the attitude of the corporation. Did you notice that change?

A Yes; we had some security then.

Q Now, it is a known fact that the N. R. A. was declared unconstitutional in the latter part of May, 1935. Did you notice thereafter any change; was there any noticeable change in the attitude of the foremen, etc., towards the men after that?

A There was.

Q. Could you honestly say that you could perceive a definite change in the attitude towards the employees at the Jones & Laughlin Steel Corporation after that decision?

A I could honestly say that there was that spirit manifest towards the ones that were known members of the Union.

Q That were known members of the Union?

A Yes.

Q Now, it is noted that the dismissals of these

men involved in this controversy are sort of staggered dismissals; that is, periodically up to January of this year from July of last year. Could you account for that, or have you any idea of why they are staggered? What do you think the company means by that?

A It doesn't look so bad for the company as if they fired them all at once. Then it would look pretty bad. It looks a lot better for them this way.

Q Your idea is that the company officials thought it would look better if they would not put the whole bunch out at once, but would take them one by one; is that it?

A I think that is their idea.

MR. KLEEB: I think that is all. Thank you.

(Witness excused.)

MR. KLEEB: Mr. Dunn, will you be sworn, please?

MARTIN DUNN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kleeb) Will you state your full name, please?

A Martin Dunn.

Q Where do you live?

A 1112 Carrol Street, Aliquippa.

Q Were you an employee of the Jones & Laughlin Steel Corporation prior to July 9, 1935?

A I was.

Q What did you do?

A Crane operator.

Q A hoisting crane or a loading crane?

A Hoisting.

Q What department?

A Sinter plant.

CHAIRMAN MADDEN: What is that?

Q (By Mr. Kleeb) What is the sinter plant?

A The incinerating plant.

Q What kind of work did you do there?

Well, that is taking the iron ore and dust, burning it and converting it into 75 per cent iron—ash. That is the reason they call it "sinter".

Q How long, off and on, had you been employed by the Jones & Laughlin Steel Corporation?

A Fifteen years.

Q How many years?

A Fifteen.

Q How did you begin working for them, what did you do? Just briefly bring us up to the time of your dismissal?

A I started out as a mail boy. From there I went to the drafting room, and I went from the drafting room to the—I can't give you the specific number of years, you know.

Q That is all right.

A To the tube mill. It was in 1920 when I first started to work for Jones & Laughlin. From the tube mill I went to the hot mill, known as the tin mill. There I worked about ten years as a helper, general helper. Then I went from there to crane man in the 14 inch mill. Then I only worked about three months in the 14 inch mill and then went back to the hot mill again, and I was off about a year or so and when I came back—

Q Why were you off?

A Well, the times were slack, and I was single then, and thought I would see the country, look for a better job some place else. When I came back I got a job at the sinter plant, crane man.

Q When was that, about?

A That was in 1934.

Q And have you been crane man in that department ever since?

A For over a year; yes.

Q Would you say that this periodic development of your employment amounted to advances as you grew older and became more acquainted with the plant?

A Well, from mail boy to the drafting room was an advancement, but I asked for a transfer to more money to the tube mill. That was no advancement. It was just that I wanted more money.

Q And you got it?

A Absolutely.

Q During the many years of your employment, had you ever been discharged for cause by the company other than in July of this last year?

A I never was.

Q Were you ever laid off for any reason other than slack work?

A I was laid off for ten days in—that was before the primaries. They brought me back in time to vote. That was in June. That would be about the 9th, because the 19th, I believe, was the day of the primaries.

Q (By Chairman Madden) That was what year?

A That was in 1935.

Q (By Mr. Kleeb) These primaries were for the employees' representation plan members?

A They were. June 9th is the date I was suspended for ten days, ten working days—ten days; they don't have to be working days.

CHAIRMAN MADDEN: Find out what that was for.

MR. KLEEB: Yes.

Q (By Mr. Kleeb) What were the reasons given for this suspension for that short period of time?

A I went up this morning, and the other crane man didn't show up, and I had to take care of both cranes; so I parked the cranes close, so as to avoid losing time. That went all right, and the motor inspector came up about 10 o'clock and started to run No. 1 crane. I was on No. 2. The foreman came up and told the

motor inspector to go on No. 2. I had seen him motioning to me as I started back from the crane and spotted it, and the motor inspector waved me down to stop. I stopped. He says "Get out". I pulled my switches, got out, and he got in. That is what I got the ten days for.

Q When was this?

A This was on the 9th of June.

Q And did you, in June, 1935, have an occasion to discuss the Union with your employer, Cochrane?

A I did.

Q Will you say what that was about?

A That was on June 3rd.

Q 1935?

A That was right after the Wagner Bill had passed, and I had a conversation with him up on that crane.

Q What was that conversation?

A Well, it was about a quarter to four, quitting time. I just couldn't tell you the date. It must have been a day or so after the Wagner Bill was passed and he was watching me work.

Q (By Chairman Madden) Was this after this suspension?

A Yes; that was after I was brought back, you see.

Q It was in July, apparently, was it?

A In July; yes.

Q The President signed this bill on the 5th of July. Could you place it with reference to the 4th of July?

A It was before the President signed, you see. It was passed by the House, I think.

Q (By Mr. Kleeb) It was between that time—

A Yes; between that time, and he was watching me. I got through. The other crane man went down,

which was unusual, because they say that all crane men should stay in their cranes until the hour of quitting time, which was 4 o'clock. This other fellow was a "gumshoe". I know it now; I didn't know it then. He reported everything I had done, and at quitting time I spotted my machine. He says "Well, Dunnie, you are doing pretty good." I said "Thanks". He says to me "Well, I seen where the Wagner Bill was passed." I said "Is that right?" He said "Yes. What do you think?" I says "Was it signed?" He says "Not yet, but I think it will be." And so I didn't say anything, and he says "Well, I hope there is a better understanding between employer and employee in the future." I says "So do I," and then he come back at me and says "Are you a member of the Union?" I says "I am not."

Q Why did you say you were not?

A Well, I was protecting my job.

Q Were you a member of the union?

A I was a married man.

Q Were you a member of the union?

A I was. I didn't think it was any of his business.

Q Go ahead.

A He says "Are you a brother to Harry Phillips?" I says "I am a half brother; yes."

Q That is the Harry Phillips who testified here previously?

A Right.

Q Go ahead.

A And he says "Well, he is president of the Union, is he not?" I says "Yes". He says "Well, how does it come that you are his brother and you live in the same house, if you don't belong to the Union?" "Well", I says "my brother lives about three miles from me. He has a wife and four children." "Oh, is that right?" I says "That is correct." I says "Somebody has told you a lie somewhere."

Have I finished your question now?

Q Yes. Prior to that conversation with Mr. Cochrane regarding the Union, had you had any discussion with any one else with reference to the Union?

A Before I left, Cochrane came down to the steps. I said "Was that all?" He said "That is all", and in going down he says, before I got to the bottom, he says "Are you sure you don't belong to the Union?" I says "I am positive." Well, I was protecting myself, that is all.

Q I mean prior to that?

A Yes; I was on the carpet twice by assistant superintendent Riddle, the assistant superintendent of the blast furnace. He brought me in, or sent for me. I had to go up. Cochrane says he asked him if I belonged to the Union. I told him I didn't belong to the Union. "Well," he says "if you do, we want to know." I says "No." He says "You know, we are not going to do anything to you, but we want you to drop it, because it is nothing but a bunch of cut-throats that belong to anything like that." He says "My Dad used to be international vice-president of the Amalgamated years ago; he was telling me how rotten they were." He didn't realize that my Dad used to be a coal miner, and I was in the coal mines the biggest part of my life, where they have a Union. He didn't know that, and I know what Unions are, but he run them down; he didn't say a good word about them. He told me how about the good the company was trying to do, and all he would do for me, give me a better job, and he says "You know, Mr. Saxer, he is a pretty fair man."

Q (By Chairman Madden) Who is that?

A Mr. Saxer. Mr. Saxer is superintendent of the Aliquippa works.

Q Of the entire works?

A Yes.

Q (By Mr. Kleeb) Did he say anything else that you recall?

A I says "All right." I says "If they treat me fair I will treat them fair." And he let me go then. That was all.

CHAIRMAN MADDEN: When was this?

Q (By Mr. Kleeb) Was this conversation with Mr. Riddle, the assistant superintendent of the blast furnace after June, after you talked with Cochrane or before that time?

A That was before. You see, they had us on the carpet.

Q How long before?

A That was before the general election, I think. They always gave us a talk before each election.

Q It was in 1935?

A Yes.

Q It was the latter part of June, 1935?

A Somewhere around there. I couldn't exactly place the time.

Q Now, were you called on the carpet for any other reason than just that? Is that all that took place in your conversation with Riddle, or was it about something you did in the plant?

A Oh, no; that was all referring to the Union.

Q In other words, you were not called in for anything in connection with your work?

A No; not at all.

Q You say you were called in by Riddle on different occasions?

A Not Riddle. I was called in by Riddle, and then again I had to go—we were taken one by one at that time, but later on they got the whole gang of us, the bull gang, and they were throwed out; I don't know what it was—just got there in time to hear certain things about the Union, and then it was over. Cochrane was mad at me because I wasn't there on time.

Q (By Mr. Carmody) Where was that meeting held?

A It was held in the wash house at the blast furnace.

Q At what time of the day?

A It was held about 8 o'clock in the morning.

Q Between shifts?

A Yes, sir.

Q Then the men were taken from their work?

A Yes, sir.

Q What did they do? Did they catch one shift going on and the other shift going off?

A Right.

Q How long did it take?

A About a half an hour.

Q And you got there just at the end of it?

A Just at the end; yes.

Q So you really do not know what was said?

A Only at the last, I heard him saying about the Union, to keep out of it. Then it was over.

Q (By Mr. Kleeb) How long have you been a member of Beaver Valley Lodge No. 200?

A From when it started.

Q From the beginning?

A Right.

Q That was in August, 1934?

A About that time, yes.

Q If you told the foreman and assistant superintendent, etc., that you were not a Union man, Mr. Dunn, what makes you think they knew you belonged to the Union?

A Because I talked a little bit too much, maybe, around the mills, to the men.

Q Did you solicit membership?

A I did.

Q In the plant?

A Well, no, sir—I didn't solicit. I told men how

good the Union was and told them where to go to join up.

Q Did you attend the public meetings of the Union?

A I did.

Q Were you on any committees, picnic committees, or anything of that sort?

A I was. I sold papers.

Q On the street?

A I did. I sold tickets for the raffle, the automobile, and I was on the committee, ticket committee, at the picnics.

Q At the time you mentioned that you had the discussion with the foreman and the assistant superintendent about the Union, are they the only times that you recall that you discussed Union activities with them?

A That was the only time. Before I was fired, there was a crane director, and he said to me, "Dunn, you better watch your foot." I says "Why?" He says "I see Cochrane lying—you can't see him; he is right across there from the sinter plant." There is a sort of lake and bushes there, and he says "He stays there almost every day and spies on you." I says "I will try to be more careful."

Q Will you relate to the Board, please, the circumstances surrounding your discharge; what occurred and when it occurred, etc.?

A Well, on June 3rd—

Q June 3rd?

A Wait a minute—July 3rd, rather, I went to put more gear shields on the gears. That is a very thick oil. In fact, you have to warm it up to pour it on the gears.

Q What turn was this that you were working on?

A Daylight. There was a motor inspector working on the other crane, No. 2 crane.

Q What was his name?

A Steve Barber.

Q What crane were you operating?

A No. 1.

Q And Steve Barber was operating No. 2?

A Yes.

Q He was the motor inspector?

A Right.

Q Continue.

A When I had time, I went to him and said "Steve, will you help me put this gear shield in the gears? They are very dry. Will you help me put some on?" He said "I am busy." I says "All right; I will wait until you are not busy". So I waited until about 3 o'clock in the afternoon, and I went to him again, and he says "I am still busy," and in the course of the conversation I had locked the crane and left the keys lying on the bench. They were about ten feet from the crane.

Q Will you tell the Board at this point about these locks on cranes and the regulations that apply to those locks?

A Whenever you lock a crane, regardless if the key is right alongside of it, nobody is supposed to open that crane until they investigate to see whether or not a man is working above or anywhere about the crane.

Q Does every crane have a safety lock on it, or supposed to have?

A Supposed to have.

Q Is that lock a sort of padlock?

A It is a lock—it on a chain, you see.

Q And that hangs right at the crane?

A Yes.

Q And the crane man has the key?

A Right.

Q When you lock it up, you lock up the mechanism of the crane, so that it cannot be operated?

A Right.

Q Is that the idea?

A There is no way to get in once you lock that crane.

Q Whether there is a lock on it or not, nobody is supposed to operate it?

A That is right.

Q And the reason is so that some one cannot go in there and push some lever and start things moving?

A That is right.

Q On this particular day, you just stated that you had locked the crane?

A Right.

Q And instead of putting the key in your pocket, you laid it on the bench beside the crane?

A Yes.

Q Then what did you do? Continue from there on.

A In the course of the conversation with this motor inspector, I forgot the keys and left them on the bench. Well, that was not unusual. All the crane men done it. Sometimes they would even leave the cranes open. On lots of occasions it is done.

Q Where did you go after you forgot your key?

A I went up on top of the crane.

Q On your crane?

A Yes; and I would release the truck and pour some gear shield on and release it again. While I was doing that, the boss came.

Q Who is that?

A Cochrane. I don't know how he got there so quick, but he got there. You have about 300 steps to climb up to this crane. I don't know how he got there. He had the keys in his hand. He says "Here, you have forgotten the keys." I looked and I says "By George, I did." "Well," he says "you know, you are supposed to

take that away with you." "Well," I says "I know that, but everybody makes a mistake once in a while and surely you will overlook that; won't you?" "I don't know", he says "Anybody could come up there and unlock your crane and you would probably get killed." "Well," I says "What do you mean—anybody?" He says "Millwright, or somebody like that." He says "You know the notices on the crane." It is just as I repeated it before. The notice says:

"No one except an authorized crane man is allowed to operate this crane."

He didn't say much. That happened about 3:15 or 3:30 and he let me finish the work. He says "I am liable to have you suspended." I told him, I says "I am pretty hard hit just now; I wouldn't want to be suspended." He says "We will see about it. Maybe we can fit it up." So when I went down to the office, he says "Don't you come out until I call you." I says "When will that be?" He says "I don't know when it will be." I says "Can I come up tomorrow morning, and if my check is hanging, O. K,—my brass check on the door."

Q Explain that, if you please, about the check?

A If you are suspended, when you go out, they have a round check. That is white, and it says "Under suspension for ten days" or the amount of days you are suspended.

Q And if you are not suspended what is there?

A A brass check.

Q That is hanging on the board?

A Yes; and you can go into work.

Q You told Cochrane you would come out the next day and if the brass check was there you knew you could work; is that right?

A Yes.

Q Did you go away then?

A I went out.

Q What kind of check was there?

A That was check No. 808.

Q A brass check?

A Yes.

Q So you assumed from your conversation that you could go to work?

A I did.

Q Did you go to work?

A I went to work on July 5th, a quarter to twelve. That is when I was supposed to go. The motor inspector says to me "We have another fellow here working a quarter to twelve," and I would have the twelve to eight. He says "You go home and come back and work twelve to eight."

Q Who told you that?

A The motor inspector.

Q Where was Cochrane at this time?

A He didn't work that day. That was his day off.

Q You were told to come back there at midnight and take the twelve to eight?

A Yes. So I worked twelve to eight. That would be July 6th.

Q Yes; July 6th.

A So when I got through work, I went up, he liked to eat me up.

Q Who?

A Cochrane. He says "You know, you weren't allowed to work, and you knew I was not working." I said "I didn't know you weren't working or you were going to be off." I told him that he told me if my check was O. K. I might come out. He snorted around there and says "Don't come out until I call you this time." I says "All right". So I waited, aod they called me on July 9th. That was Tuesday, and I went down and got a pass and went into the mill. I thought maybe I was going to work, and Mr. Slater—

Q Who is he?

A He is a boss over Cochrane. You see, Cochrane is his assistant. Slater is the boss over the ore yards, crane men and electricians in the ore yards, and Cochrane is the boss of the bull gang, these cranes and blast furnaces. Cochrane says to me "You know that Slater is my boss, my foreman." "Well," I says "Yes, I know of thought he was; I didn't know for sure." "Well," he says "I got orders—"—they were both there. I don't know why they both had to be there. He handed me an envelope. I says "What is this—my money"? He says "Yes". I says "This means I am fired?" He says "Yes." I says "What for?" "Well," he says "nothing personal". Now, why did he tell me "nothing personal". "It was nothing personal," he says, "you were fired for." I says "Thanks; I will see you later." That was the last.

Q Did other crane men ever leave their keyes lying on the bench that you know of?

A Absolutely. They did it at times.

Q Do most of the cranes have locks on them at all times?

A Well, these two cranes did. I don't know whether they all have them or not.

Q Well, do you know whether there were any cranes that were not provided with a lock?

A I can't say. It was the only cranes I worked on.

Q Do you personally know of other crane men frequently leaving their locks open?

A Absolutely. When they broke me in on the job, it was done on different occasions.

Q Are there crane men working today that you know have left their locks open?

A Sure. They were getting the time, too, I noticed, when they knocked me off. They were giving me one day pay, and sometimes two, and the other fellows were getting four and five days.

Q When did you notice this reduction in time?
A Well, I noticed it after the election.
Q The company election?
A Right.
Q That is for employee representatives?
A Right.
Q Did you vote at that company election?
A I did.
Q Did you mark your ballot?
A I cast a blank ballot both times. I tried to sneak away. I didn't want to go over, but there was a foreman here and a superintendent there and it was like running the gauntlet; you had to go through with it; that was all—or else.

Q I am led to believe that at one time the Beaver Valley Lodge had occasion to lose its records and things; they were taken away; is that right?

A That was one of the things that I forgot to tell you, which Cochrane asked me.

Q Well, is that right? Did it occur? What happened; were they stolen, or did they disappear, or just what happened to them, do you know?

A They were stolen.

Q And have they ever been returned or found since?

A No; they have not, and it wouldn't take—

Q Did you ever discuss that matter with any officials of the company?

A With Cochrane on the day he asked me was I a brother to Harry Phillips. He says "Didn't the Union lose their charter?" I says "I don't know whether they did; I don't think they did. The papers didn't state that." I says "They had some books stolen." I was just telling him what I read in the paper. I wasn't going to say that I really knew it. That is what he was trying to get out of me, you see. "Well," he says

"they lost their charter. Mike Tighe took the charter away from it." I says "I don't know anything about that, but I know the books and charter were stolen, but I know they got another charter, according to the papers." You see, this was all that I read in the paper. That is all, I think.

Q Did he express knowledge of the fact that the records had been stolen? Did he state he knew they had been stolen?

A Yes. He says that he heard about it, you see. When I was getting one and two days, I went to Cochrane and says "I want to be transferred; I want to be away from this place." He says "Go ahead and put a transfer in." I put one in to the hot mills and I am still waiting. So I got tired of waiting, and I went to him and says "Cochrane, I got to do something. One and two days can't keep my wife and baby and I." I says "How about going over to labor with Mr. Hook?" He is the labor boss, the general labor foreman. He says "You can go over and see." So I went over to Hook, and he says "You will have to get a note from Cochrane releasing you." So I got the note from Cochrane, and so I went on Labor. I was getting five days a week. I must have worked on the Laboring job a month before I was fired. One day Cochrane came to me and he said "I want to see you." I says "What do you want?" He says "We need you back on the crane." I says "I don't want to go back." "Why not". I says "I can't go back there, because I was not getting the time." "Well," he says "you will do me a favor; won't you, help me out?" I says "Provided I get three days and the balance on the labor gang, I will." He says "Well, I will see to that." Just as soon as I worked on the crane, I got two days one week, and I went to labor, and I couldn't get no more labor. Then the next two days I was fired. He brought me back to fire me; that

was all. When he fired me, I carried a laborer's check number.

Q Did you notice personally that you were being watched very closely by any of your bosses?

A All the time. They were always talking and asking me questions about the Union.

Q You are a half brother to Harry Phillips, are you not?

A I am.

Q What were you earning at the time you were discharged?

A $5.16 a day—64.5 cents an hour.

Q How many hours were you getting on the average?

A An eight hour day.

Q Five days a week?

A We were getting five days a week.

Q Five days a week?

A Yes.

Q And since the day of your discharge have you worked any place else?

A Since then I have been working on WPA.

Q How much have you earned?

A On WPA?

Q Well, any place since you were discharged by Jones & Laughlin.

A I think around about $200.00 with WPA so far.

Q That has been your total income?

A Yes.

Q You said you were married?

A Married.

Q Any children?

A I buried one and I still have one.

Q You still have one?

A Yes.

MR. KLEEB: That is all. Are there any questions on behalf of the members of the Board?

CHAIRMAN MADDEN: That is all.

(Witness excused.)

CHAIRMAN MADDEN: We will recess for five minutes.

(Whereupon, a short recess was taken; after which the proceedings were resumed as follows:)

MR. KLEEB: Mr. Fagan, will you be sworn, please?

PATRICK T. FAGAN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kleeb) Will you state your full name, Mr. Fagan, please?

A Patrick T. Fagan.

Q Where do you live?

A I live at 822 Woodburn Avenue.

Q What is your occupation, what do you do?

A President United Mine Workers of America, District No. 5.

Q Mr. Fagan, as you probably know, this controversy involves the Jones & Laughlin Steel Corporation, of Aliquippa, Pennsylvania, and they are alleged to have discriminatorily discharged some of their employees. It is in evidence that one of the completely owned subsidiaries of this corporation is the Vesta Coal Company, a Pennsylvania corporation. Have you in your work had any occasion to do business with the Vesta Coal Company, in its labor relations?

A Yes; United Mine Workers, District No. 5, subdistrict No. 4 have a contract with the Vesta Coal Company at their mines 4, 5 and 6, and employee in the neighborhood of 2250 miners.

Q When was this contractual relationship most recently entered into?

A Well, for years we had a contract with the

Vesta Coal Company, the officers and members of the United Mine Workers, District No. 5, until 1927, when we had a strike in here that lasted from April 1, 1927, until about October 1, 1928. From that time on until July, 1933, we had no contractual relations with them. In the months of June, July and August, we reorganized those mines; in fact, we rehabilitated the United Mine Workers, and those men joined our Union of their own free will, and after the commercial agreement was made, we then immediately negotiated contracts with all the captive mine operators in western Pennsylvania, that is, all the steel company mines and public utilities.

Q Prior to 1927, at which time there was a contract between the employees, through their Union, and the Vesta Coal Company, how many years was that contract in existence, if you know? That is, prior to 1927?

A Well, Vesta No. 1 mine probably was in operation back in, say, 1901, it opened up and as soon as that mine was opened up and there were ten or more men there, the United Mine Workers organized it and had a contract with them.

Q After this in 1927, I think you said, it ended in 1928?

A October, 1928.

Q Between the time of the resumption of operations in these coal mines in 1928 and entering into this contract in 1933,—I think you said it was 1933.

A 1933.

Q What, if anything, was the attitude of these men; what was the relationship of the miners and the Vesta Coal Company during that period of time? Was it a productive, harmonious period?

A Well, the men were unorganized;; they were working as individuals, instead of collectively, with the company, and if the management didn't like the color of the men's hair or their eyes or their nationality or

even the color of their necktie, they could fire them and evict them out of their homes. There was more or less confusion and misunderstanding and contention all during that period.

Q Would you say that that hindered production?

A Absolutely.

Q To the point where the men were not working full capacity, that is personal capacity, because of that contention?

A Oh, yes, due to the fact that those men had been United Mine Workers and enjoyed the benefit of collective bargaining and the relationship and understanding that had existed there for years.

Q Then, as a result of the rehabilitation of the organization, the ultimate end was a contract?

A Yes.

Q That contract is between the Vesta Coal Company and the United Mine Workers?

A Yes.

Q And it provides the regular systematic set-up of bargaining?

A It provides for collective bargaining and for regulating hours, wages and working conditions for the workers in the yard and all those that enter into mining. There is machinery set up under the contract, where, if a man has a grievance, whether it is a real grievance or an imaginary grievance, if he can't have proper adjustment made with the mine management, he calls in the mine committee. That is part of the local union. The local union is composed of all men employed in and around the mine. They have a president, vice-president and secretary and treasurer, and it is this mine committee that takes up grievances. If the mine committee is unable to reach a satisfactory settlement in the grievance or dispute, then the district organizer is called in, or one of the representatives, to take the

grievance up with the management. If they are unable to reach a satisfactory settlement in line with the agreement, then there is a board of two operators and two miners that sit to listen to the grievance and render a decision.

Q Has the Vesta Coal Company, through the officers, expressed to you satisfaction with this set-up and the result it has brought about?

A Well, we get along very, very harmoniously and have fine relations and a good understanding as a result of collective bargaining and collective reasoning with the company. It is more satisfactory for everybody concerned.

Q There exists now and has existed since 1933 a present cooperation between the men and their bosses?

A Absolutely.

Q And would you say that, from the standpoint of production and morale in the ranks of the employees of the Vesta Coal Company, production has bettered, and the men are working better and more harmoniously?

A Yes. I would say from the standpoint of production and cooperation and safety and everything else that enters into the mining of coal and production, there is a much better feeling prevailing between both the management and the men that are employed at the mine, because, after all, the men who are in charge for the Vesta Coal Company in a managerial capacity know what the cost of production is; they know what their tonnage rate is and what their hourly rate is and everything else, and the man who is employed at the mine knows exactly what he is going to be paid for loading a ton of coal or doing an hour's work or doing some dead work in the yard—anything that enters into mining.

Q So you would say, from your experience with

the Vesta Coal Company during the agreement period of the strike period, where the strike was in effect, that the harmonious period during the time of this agreement was brought about by the company's recognition of the Union, recognition of the right of those men to organize as they pleased and the recognition of those men to bargain collectively with their employers for rates of pay and hours and conditons of employment? Is that what you would say?

A That is absolutely true.

Q When does the present contract between the United Mine Workers and the Vesta Coal Company terminate?

A It runs from October 1, 1935, until April 1, 1937.

Q (By Chairman Madden) Was that contract, when it was made in October to be retroactive to last April?

A No; it expired last April, and as a result of waiting on the passage of the Guffey-Snyder legislation and one thing and another, we had extensions, and the officers of the United Mine Workers of America would either send a telegram or a message to the local union and tell them that they had agreed to an extension.

Q So you are working under that contract until October?

A Until a new contract was to be put into effect.

Q (By Mr. Kleeb) Do you recall whether, at the time of the strike, those men produced any coal for the Jones & Laughlin Steel Corporation? Do you recall that?

A During the strike?

Q During the strike of 1927.

A Well, yes; the company tried to work their men on a non-union basis, and had coal and iron policemen—

Q Strife and fighting?

A Strife. They evicted miners from their homes. Fannie Brice was in there and wrote a story about it, and one of our national organizers, during the zero period, asked Mr. Edwards not to throw the miners out of their homes, that they would freeze and he said "To Hell with the miners and their families and everything else".

Q Would you say that that strike affected the production of the Jones & Laughlin Steel Corporation?

A There is not any question about it, and their labor turnover was practically 100 per cent.

MR. KLEEB: That is all. Are there any further questions?

Q (By Chairman Madden) What is the situation at the Vesta mines now as to the independence and self-respect of the men? Is it noticeably different from what it was before they got the contract or knew that they were fully organized?

A There is a greater feeling of security among the men that are employed at the Vesta mines, and, at the same time, they know that when they got this contract with the company they had not only won their economic and industrial freedom, but they won their political freedom. Prior to the coming of this contract, when election day came around, whether it was for a constable or a judge in Washington County or a County Commissioner or the Governor of the Commonwealth of Pennsylvania they had to vote the way the bosses told them. The bosses told them how to go out and mark their ballot; if they didn't, they would get fired. It means industrial, economic and political and social freedom for the men that are employed at those mines —the restoration of civil liberty and political rights.

Q (By Mr. Carmody) Mr. Fagan, do you know whether the same management, that is, the same superintendents and approximately the same foremen, have

been at the Vesta Coal Company over these years when you were dealing with them? In other words, was the management the same when you had no contract as it is when you have a contract?

A In some respects. Joe Edwards was the general superintendent during the early part of the strike and, of course, he is retired now because of his age, but a lot of the mine foremen and superintendents at the mines are still there. The ones that were there prior to 1927, during the strike period, are there today, and those men will not say publicly, but they will admit privately, that they are much happier today than they were when working on a non-union basis.

Q Has it been your experience, both with the Vesta Coal Company and with other coal companies in the 5th District, with whom you have dealt over a long period of years, that the foremen and superintendents always carry out the policy of the management in labor relations?

A That is true, absolutely. They are governed by the policy laid down by the president of the company or the board of directors.

Q If the company makes an agreement with a trade union that calls for certain rights on both sides, is it likely that a foreman or superintendent will carry on anti-union propaganda while that strike is in existence?

A Now and then you will find a boss that is probably, for selfish motives, mainly, trying to get ahead in the company, or something like that, or get the superintendent's position, and he may still continue to carry on a campaign to keep what is known as the brotherhood or independent union, or spread propaganda to injure the United Mine Workers of America or any organization that may have a contract. You will find that occasionally.

Q Well, if that happened, would your organization be likely to take that matter up with the higher management and complain about it?

A We would lay that on the desk of the management of the company and would make a complaint, as to whether that was the way they were going to live up to this contract, to be back-biting and carrying on in that manner, and we would make it pretty warm for them, and, as a rule, we do.

Q Now, generally speaking, do you find that no matter what your past relationships have been with a company, whether you had a contract that had gone over a period of three or four years, and when a company has operated open shop, as has happened in the mines of the Pittsburgh District on one or two occasions, generally speaking, do you find, in spite of those difficulties, that when you do enter into a contract, the relationships of the men of the organization with the company are fair and reasonable and peaceable, after everything has been sweep away and a contract has been signed?

A It has been our policy, when we made a contract with the coal operator, whether it is in a commercial or captive mine, we say "Now, we have had our differences; we fought one another; but we have sat down around this table to agree to make a contract; we are making this contract in a spirit of cooperation, and whatever is in there for the protection of the miners, we expect them to get it, both in letter and spirit, and whatever is in there to protect the company, they will be treated likewise." As a rule, we have with practically all of the coal operators that we have here in western Pennsylvania a very fine relation. We respect the agreement; we respect the opinions of the men that we deal with, and, as a rule, we have a cooperation of practically 100 per cent, and we have in western Pennsylvania 40,000 organized mine workers.

Q (By Chairman Madden) Are you, as an official in a labor organization, familiar with the Amalgamated association of Iron & Steel Workers, which is the party in this case?

A I know the officers of the Amalgamated Association of Iron & Steel Workers. I am personally acquainted with them. I have addressed conventions of their organization.

Q Is that the standard organization for such workers?

A Yes.

Q And is it affiliated with the American Federation of Labor?

A Yes.

Q (By Mr. Carmody) Are the United Mine Workers also affiliated with the American Federation of Labor?

A Yes.

Q (By Mr. Kleeb) As the result of some of Mr. Carmody's questions, a previous witness testified that there was a better agreement and that the men would be better workers if they did not have this thought of intimidation or worry about being members of a Union, and if they were not under pressure or being spied upon, some of these steel workers said they thought they would be better workers. Now, as to the coal miners and their employers, would you, from your experience say that the coal miners would be better workers and there would be a better feeling if there were such a contract with every employer as you have with the Vesta Coal Company?

A. Well, anybody with any common sense knows that if you are working in a mine or mill or factory, and there is a stool pigeon spying around, watching a man who is either loading coal or cutting coal or operating a machine in a mill, that that man cannot be as

efficient as if he were working in a factory or a mill or a mine that was organized, and they knew they had a contract relations. That mine would be on production, because, after all, the organizations in organized labor stand for protection and for efficiency.

Q. And yoo think it is a fair analogy to say that the same thing is true in the steel industry, that these men, if they knew they were organized, would be better steel men?

A. Yes, sir.

Q. And your coal miners would be much better coal miners?

A. There is not any question about it. In my humble opinion, from the experience I have had in the coal industry—and I have been officially connected with the United Mine Workers of America since the year 1920, either as vice-president or president or the organization, I feel that collective bargaining is part of the solution of the great problems that confront this nation of ours, whether it is steel or any other industry that you care to go into.

Q. And without it, production is definitely affected?

A. Absolutely.

MR. KLEEB: That is all. Are there any further questions?

CHAIRMAN MADDEN: That is all.

MR. KLEEB: You are excused. Thank you very much.

(Witness excused.)

MR. KLEEB: Mr. Brandy, will you come up and be sworn, please?

DOMINIC BRANDY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Kleeb) Will you state your full name?

A. Domonic Brandy.

Q. Where do you live, Mr. Brandy?

A. 1112 Sheffield Avenue.

Q. Aliquippa?

A. Yes, sir.

Q. Speak loud and slowly so that the reporter can get you and the Board can hear what you are saying.

A. Yes, sir.

Q. Prior to November 28, 1935, you were an employee of the Jones & Laughlin Steel Corporation; were you?

A. Yes, sir.

Q. How long had you been employed there, in years?

A. Since 1910.

Q. From 1910 up until November 28th, which is the date on which you were discharged, I believe—that is correct, is it not?

A. Yes.

Q. What did you do? Did you have various kinds of work there?

A. Yes, sir.

Q. What was you job when you were fired?

A. Jig man, and coal washer.

A. Yes.

A. Are they the same thing?

A. Well, there is the jig and the coal washer. That is what we call the coal washer.

Q. The jig man washes the coal?

A. Yes, sir.

Q. That is what you did?

A. Yes.

Q. You did that for how many years prior to the time you were fired?

A. Almost fourteen years.

Q. You were coal washer for fourteen years?

Q. Of course, I worked there longer than that, but I wasn't doing the same job.

Q. But you were washing coal for at least fourteen years?

A. Fourteen years.

Q. And you were discharged, you said, on November 28, 1935?

A. Yes, sir.

Q. Did you receive a discharge notice?

A. Yes, sir.

Q. Iss that a correct photostat of the original that you received (handing a document to the witness)?

A. Yes, sir.

MR. KLEEB: I offer it in evidence.

CHAIRMAN MADDEN: It may be admitted.

(The document referred to was thereupon received in evidence and marked "Board's Exhibit No. 56.")

Q. By Mr. Kleeb) The other half of that, the part that was attached to the perforated end of the original of this photostat, what happened to that?

A. Well, they keep that.

Q. They have the reason on there of why you were fired?

A Because they make up a reason, but I don't see any reason at all.

Q. What reason did they put on there, do you remember?

A. They put on it was a bad sample.

Q. Now, explain briefly what your job is; just what do you do as a coal washer or jig man?

A. My job was to separate the coal from the slate. The machinery that is working in there, the kind they call plungers, they go up and down, and waters come down in them and they are slow, and they got kind of a drawer in, with a pipe that goes down into the pit,

and my job is lower down with the drawer, or either up. When they get slate in the bottom of the screen, I suppose, lower down, so that the slate goes over in the pipe, they go to a different place and re-wash the jigs.

Q. So that, in effect, you job is to separate the refuse slate from the good coal?

A. Yes, sir.

Q. Is that after the coal has been crushed?

A. Yes, sir.

Q. After it has been crushed?

A. Yes, sir.

Q. After it has been crushed?

A. Yes, sir.

Q. And that mechanism is called the jig; is it not?

A. Yes, sir.

Q. How many jig men are there?

A. There is a jig man and a helper every turn.

Q. How many turns are there?

A. Two turns.

Q. A day shift and a night shift?

A. Yes.

Q. So that you have four men that separate refuse and slate from the coal.

A. Yes.

Q. Two are jig men and two are helpers?

A. Yes, sir.

Q. Were you a helper or the jig man?

A. Just the jig man.

Q. Had any of the other three been washing coal before you?

A. One of them.

Q. Was he the other regular jig man?

A. Yes, sir.

Q. And you said you were with the company since 1910, I believe?

A. Yes, sir.

Q. Do you belong to the Beaver Valley Lodge No. 200?

A. Yes, sir.

Q. How long have you been a member?

A. August, 1934.

Q. Were you a charter member?

A. No, sir.

Q. But you became a charter member very soon after the organization?

A. Yes, sir.

Q. Practically at the same time?

A. At the same time.

Q. Did you attend all the meetings of this organization?

A. Yes, sir.

Q. Did you attend the first meeting?

A. I attended the first meeting in Ambridge.

Q. Were you active in soliciting members?

A. Yes; I signed 665 men before we opened an office in Aliquippa.

Q. And you continued to stay active up until this minute?

A. Yes; I was more active now than I was before. Also I was trustee in the Union.

Q. Were you a trustee at the time you were discharged?

A. Yes, sir.

Q. And you have since been replaced before of another election; is that right?

A. Yes, sir.

Q. Did you distribute circulars and hand bills?

A. Yes, sir; and also newspapers.

Q. Did you sell newspapers on the public streets?

A. Yes, sir.

Q. That is, newspapers involving Union activities?

A. Yes, sir.

Q Were you seen doing that by the company officials or foreman?

A. Well, everybody seen me—a public place.

Q. Were you a member of any committees appointed for Union picnics?

A. Yes; I was on that committee and at the meeting, and anything that was good for the organization.

Q. You publicly solicited memberships, did you not?

A. Yes, sir; and I also went to Midland and talked to the membership down there at Midland.

Q. You testified, I believe, at the old steel board hearing last year?

A. Yes, sir.

Q. So there was no question but what the company knew that you belonged to the Union?

A. I see no reason.

Q. Prior to your discharge and prior to the facts surrounding the reasons for your discharge, had you any conversation about Union activities with any of your bosses?

A. Yes, sir. They came up at least every week.

Q. What?

A. That was the conversation almost every week, every day. The boss and assistant superintendent and superintendent would always come up to the jig room and tell me how rotten the Union was, and I told them I was belonging to that Union, I was a trustee, and I liked to belong to it; I was proud of it, and would belong to it.

Q. When did this conversation take place?

A. Well, they started in 1934 until 1935, I got discharged.

Q. In other words, you had frequent conversations from the time this Union organized—

A. Yes.

Q. Up to November, when you were discharged?

A. Well, November 28th.

Q. November 28, 1935?

A. Yes, sir.

Q. Did you ever discuss the N.R.A. with any of your foremen?

A. Yes, sir.

Q. When?

A. The N.R.A.—before the N.R.A. was in effect.

Q. Before what?

A. Before the N.R.A. was in effect, we always discussed about the N.R.A., and they would criticise the N.R.A., because he said they could have given the people all the time, that they could do as they pleased.

Q. With whom did you discuss the N.R.A.?

A. The superintendent.

Q. What was his name?

A. Kerns.

Q. Why did you discuss it with him?

A. Because I wasn't getting full time.

Q. Were the other men getting full time?

A. Yes, sir. I always got short timed, as long as I belonged to the Union.

Q. In other words, as soon as they found out that you belonged to the Union, you noticed that your time was shortened?

A. Yes, sir.

Q. Did you have any occasion to discuss the Wagner Bill?

A. Yes.

Q. What you know as the Wagner Bill?

A. Yes, sir.

Q. With any of your bosses?

A. Yes, sir.

Q. Will you please state when that was and with whom you talked?

A. That was after July—the 5th of July, we discussed about the Wagner Bill many times, and he told me the Wagner Bill—

Q. Who told you?

A. Bill Kerns and Swann.

Q. Superintendent and assistant?

A. Ross Swann.

Q. (By Chairman Madden) Superintendent of what?

Q. (By Mr. Kleeb) He is superintendent of what?

A. Bill Kerns.

Q. What is he superintendent of?

A. The coke works.

Q. The coke works?

A. Yes, sir.

Q. And Swann is assistant superintendent of the coke works?

A. Yes, sir.

Q. Since July 5, 1935, you discussed the Wagner Bill with both of them?

A. Yes.

Q. And what was the nature of that conversation? What was said?

A. Well, after the N.R.A. was overruled, then he came up one day and told me—"What do you think about N.R.A. now". Well, I says nothing. "Well," he says "it is overruled, isn't it?" "Well," I said "All right, but we have the Wagner Bill now." Well, he said the Wagner Bill was no good; it was unconstitutional—"The Supreme Court is going to overrule that."

Q. Did you reply to that; did you say anything to him about that?

A. Well, no. I says "Well, let them do what they please. We are organized anyhow. We started to organize in 1934 and we keep on going."

Q. Was that all that you said at that time?

A. Yes, sir.

Q. You stated that after the Union began organizing, and was organized in 1934, you started to get short timed?

A. Yes, sir.

Q. Do you think that was became of your activity in the Union?

A. Yes, sir.

Q. Other than that, was there anything you no-

ticed between that time and the time you were fired, that would account for the way the company discriminated against you? Did anything else happen?

A. Oh, yes.

Q. What?

A. In October, 1934, Lieutenant Kelly—

Q. Is that a J & L Lieutenant?

A. Yes; a J & L Lieutenant.

Q. (By Chairman Madden) What is he lieutenant of—police?

A. Police.

Q. (By Mr. Kleeb) The company police?

A. The company police, and we were up at Elk's Hall and we had a meeting up there, supposed to be an American Legion meeting, but what I could see the only discussion was about the Union. It was a Union meeting from what I could see in there. Mr. Jack Powell was speaker.

Q. Who is he?

A. He is an agent.

Q. An agent?

A. Yes; the Hopper Company.

Q. He is not a J & L man?

A. No, sir.

Q. He spoke at the meeting?

A. Yes, sir. Mr. Saxer was supposed to be there, but he took the place of Mr. Saxer.

Q. Mr. Saxer is the general superintendent of the Aliquippa Works?

A. He is the superintendent of the Aliquippa Works.

Q. And he was supposed to have been the main speaker, but Powell spoke?

A. Yes.

Q. Was the meeting called by Lieutenant Kelly?

A. No; the meeting wasn't called by Lieutenant Kelly.

Q. What about Kelly?

A. Well, after we had the meeting upstairs, then we go downstairs for a little time, and they gave me, I think, about four or five glasses of beer. He thought I might get drunk on these glasses of beer; so then he says "Brandy, I want to see you." I says "O. K." So he talked to me in the corner and he told me if I belonged to the Union, and I says "What is the reason?" "Well," he says "I would like to know." "Well," he says "I want to know because you went to West Aliquippa to get a hall for to have a Union meeting." "Well," I says "I didn't go." "Well," he says "Bill Piccelo and Joe Bolina"—he is the foreman on the seamless tube, and he says "They told me that." Before that I went to the foreman—the assistant foreman, I mean—he called me up and he told me he wanted to see me right away. Well, I wasn't off.

Q. Now, just a minute. Let us get this course of events straight. You were just talking about a conversation that you had with Kelly?

A. Yes.

Q. Is that all that Kelly said at that time?

A. No, no.

Q. Are you still talking about what he said?

A. Still talking about him.

Q. All right.

A. The assistant superintendent called up the house and told me on the telephone, in the store there, he wants me right away. So when I went back home, he left his number, and I called him up. The assistant superintendent called me up.

Q. Are you telling Kelly this?

A. No, no; it was three days before that.

Q. All right.

A. So when I got the assistant superintendent, he told me "I want to see you right away." I said "All right." I thought he wanted to give me a day's work or something. "Well," he says "how about by the Woodlawn drugstore?"

Q. You wanted to meet him there, you suggested that?

A. He said "O.K." When I went there he won't talk to me in public on the street.

Q. Who was there?

A. There was a couple of friends of mine there, when he came in there.

Q. Who is he?

A. Assistant superintendent Swann.

Q. You met Swann on the street?

A. On the street.

Q. A couple of friends of yours were there?

A. Yes.

Q. This was the day before the American Legion meeting?

A. Three days.

Q. Three days before?

A. Three days before.

Q. He did not want to talk to you on the street?

A. No; he taken me back in the alley.

Q. What did he say to you?

A. He told me, if I was going down to West Aliquippa to get a hall for a meeting.

Q. He asked you if you were going?

A. He asked me; if I was that day. I says "No." "Well," he says "Lieutenant Kelly called me up and told me Mr. Brandy was going around in Aliquippa to get a hall for the Union to have a meeting." So I told him I didn't. "Well," he says "you watch yourself; Lieutenant Kelly is going to see you." So then the night, on Tuesday night, we had a meeting up at the Elk's Hall.

Q. That is that American Legion meeting?

A. The American Legion meeting.

Q. Three days later?

A. Yes.

Q. And that was when Kelly was talking to you?

Q. As I understood you, he says that you got a hall for a Union meeting in West Aliquippa?

A. Yes.

Q. And you told him you had not?

A. Well, I sap not at that time.

Q. Yes.

A. Then he told me "If you don't quit the Union, you know what is going to happen?" He said "You know, J & L don't like the Union." "Well," I says "it isn't what J & L wants. This is what the workmen want. We want the Union." "Well," he says "J & L is going to stop; it is going to shut down. If you fellows are going to organize, they are to shut down, so you fellows will all be out of work in the plant in Aliquippa." Well, I told him, I says "J & L can do what they please.

Then three days later, Captain Harris.—

Q. Who is Captain Harris?

A. He is the captain of police.

Q. The J & L police?

A. Yes; he is captain. He met me on the street, and he called me in there. So he started cussing and everything else, and he says "What are you trying to do?" I says "Not a thing, why?" By that time a fellow was with me; so he says "What did you start to do; what did you start to organize a Union?" "I didn't start to organize the Union, I am with it"; that I was a member of the Union. So he told me "If you fellows start to organize the Union" he says "J & L is going to shut the plant down." Then he told me what Mike Tighe was going to do, that him and the rest of the fellows of the Amalgamated weren't any good. He said "They get away with your money."

Q. Did you notice any discrimination of any kind towards you after you testified before the Steel Board in November, 1934?

A. Yes, sir. It was outside the mill; there were two or three stool pigeons always right behind me, and in the mill they always talked about this Union, it was no good, or otherwise they wouldn't five me short time

right along, and every time I make a complaint about it, they wouldn't listen to me. They won't even talk to me about it.

Q. How do you know you have been getting short time? Did you check up on it?

A. Why, sure.

Q. How did you check up?

A. Well, the new man which has come in the plant, he used to get three and four and five days a week. I only got two and one, sometimes three, and the rest of them were getting five.

Q. You said the "new man." That is your helper.

A. No; my helper ain't getting much more than I did.

Q. Who is this new man?

A The new man just come in there two years, in the plant.

Q What did he do?

A Well, he worked around there.

Q In other words, the man in the same department with you was not a jig man?

A Yes.

Q He was doing other kind of work and getting more time than you?

A Yes, sir my helper and also my buddy is getting more time than I did.

Q Was there sufficient work there to give you more time, or do you think it should have ben distributed more equally?

A When the washer wasn't working, they put the people laboring other places, but they sent me on—

Q If the washer did not have enough to do, they would give him another job?

A Yes, sir.

Q Say, five or six days a week?

A Yes, sir.

Q But they did not do that to you?

A No, sir.

Q As a jig man, were you ever laid off for any reason?

A I was laid off in August.

Q In August, 1935?

A On the 5th of August.

Q 1935?

A Yes, sir.

Q For a reason?

A The same reasons as I got now—bad sample.

Q Have you ever been laid off before as a jig man for a bad sample?

Q In ten years?

A Fourteen years all together.

Q Fourteen years as a jig man?

A Jig man.

Q And in all of that time you have never been laid off?

A No, sir.

Q Other than for slack work?

A Well, in slack work.

Q But I mean you had never been laid off for a reason?

A No, sir.

Q Other than that week you got in August, 1935?

A Yes, sir.

Q Will you state, please, what happened on the day you were discharged; what were the facts and the reasons for your discharge at this particular time, namely, November 28, 1935?

A Yes, sir.

Q Slowly, please.

A On November 28, 1935, before I got discharged, that was on Saturday, I worked daylight, and Sunday the washer wasn't working; so I went back to work on Monday night, four to twelve, and the fellow came in, and then took a sample. He wasn't the regular sample man, because he only worked daylight. He came up and took a sample and took it down and put

it in the oven to dry. They put in the the oven to dry 24 or 40 hours before they test it.

Q If I understand you correctly, the sample man takes a sample of coal that you wash and they dry it in an oven, and they test it by some process to determine the percentage of refuse or slate that is not removed from the coal; is that it? It is based on percentage? If you are having a low percentage, then you are washing the coal well?

A Yes.

Q If your percentage gets up, then you are not doing a good job?

A Yes.

Q You are not cleaning it, perhaps, as well as you should?

A Right.

Q And your sample was taken on Monday, on the four to twelve period?

A Yes, sir.

Q All right. Now, go ahead from there.

A On Tuesday, at four to twelve, there is nobody to take any sample. They take it daylight but not night turn.

Q You were working four to twelve?

A Yes, sir.

Q On Tuesday?

A On Tuesday.

Q And no sample was taken on Tuesday?

A No sample was taken.

Q All right.

A On Wednesday the washer ain't working, so they called me up, in the place where I used to live before, but they can't get me, so they call up at the Union headquarters and left word for me to work daylight on Thursday—in daylight, eight to four. When I went to work in the morning, the boss came in. That is Felgar. He came in the locker room and he told me "I had an awful time to get you yesterday". I says "Why?" He

says "You moved, didn't you?" I said "Yes: but I don't live very far from there, but if you want me at any time at all, call up 187 in the Union office." He says "That is a hell of a place to call." I says "Why?" He says "I don't believe in it."

Q That he did not believe in it?

A I told him "That don't make any difference, whether you don't. You don't have to talk to the Union; you talk to the men in there." So I went up there to go to work, and never say anything about it afterwards. At about 10 o'clock the Millwright came up, Angelo Sylvester. He told me "It is verp bad down there; we are taking tests." "Well," I says "What day was that sample taken?" He says "I don't know."

Q Who told you he did not know?

A Sylvester, Angelo Sylvester.

Q He is a Millwright?

A Millwright. So he came up after awhile and he says "They are raising all kinds of Dickens down there about that sample." I said "That ain't my sample." Well," he says "I don't know whose it is." Then the sample man came in about eleven.

Q What is his name?

A Charlie Ross. He came in, and I asked him "Did you take a test on Monday night, four to twelve sample?" He says "Yes"; that was taken yesterday." "Well," I said "will you find out for me if that sample is all right or not?" "Well," he says "yes; I will." So he went up to the office and asked the superintendent how about the sample. So on Monday night, you know, they figured in the office there—

Q Yes.

A He says "Very good." He came back at 1 o'clock and told me about it.

Q So the man took the sample that was taken from your jig on the Monday night turn and said it was fine?

A Yes.

Q Go ahead.

A Then, after he told me that, I told him "Are you sure?" "Well," he said "I am positive, sure. There is a record up there in the office. It is pretty bad." I said "what date is it?" He says "I don't know. I ain't looked." So about 3 o'clock they went and signed an affidavit.

Q Who went and signed an affidavit?

A This Charlie Ross.

Q Who else?

A And Angelo Sylvester.

Q How do you know they went to sign an affidavit?

A They came up there and told me about it.

Q Did they tell you what was in the affidavit?

A No, sir; he don't know what was in it.

Q Where did he sign it? Was it in somebody's office.

A No; it was in the sample room.

Q Who asked him to sign it?

A The foreman.

Q Did the foreman tell Sylvester or Ross what they were signing?

A No, sir.

Q Did Sylvester, who signed something, tell you that he did not know what he was signing?

A He didn't know what it was. He didn't know whether it was the same, and he didn't know what day it was. They came and signed it.

Q Who told you about the bad sample?

A Angelo Sylvester, the first time.

Q No; your boss told you you had a bad sample.

A That is it.

Q Who was the boss?

A Cliff Felgar.

Q What did he say about it?

A He said "Bad sample."

Q Did he say when the sample was taken?

A From what he say, it was two pounds of sample.

Q Two what?

A Two pound sample of slate and one of them weighed about three-fourths of a pound and there was a little over, because I could tell the sample that is tested, because I have been imagining it along, long time. I asked him—I said "When was that sample taken?" He said "Tuesday night, four to twelve."

Q Now, Felgar said that a bad sample of yours was taken on Tuesday at four to twelve?

A Yes, sir.

Q Did anybody take a sample from the output of Tuesday night, four to twelve?

A No, sir.

Q Could it have been taken without you knowing it?

A No; it has to be taken from me.

Q All right.

A So I told him, I said "I guess that sample ain't mine." He said "Why?" I said "Because Tuesday nobody take any sample, four to twelve." He says "I have to make that change on either Monday or Tuesday, and you go up and get your clothes and get the Hell out of here."

Q That was Thursday, November 28th he told you that?

A Yes, sir.

Q Was that the day you got notice to quit?

A Yes.

Q A copy of which I have in my hand?

A Yes; that is the time it was ready.

Q (By Mr. Carmody) Was that Thanksgiving Dap?

A The sample?

Q No; Thursday the 28th?

A Yes, sir.

Q Was that Thanksgiving Day?

A Yes; I worked that day; yes, sir.
Q You worked that day?
A Yes, sir.
Q The mill did not work that day?
A Yes; the mill worked that day.
Q All of the mill worked that day?
A Yes, sir.
Q You had no holiday?
A No, sir.
Q Some people had a holiday but you did not have a holiday?
A I don't understand what you mean yet.
Q I mean that people in other lines of work had a holiday, but you did not have a holiday from making coal and coke, etc?
A I don't understand it.
Q (By Mr. Kleeb) You know that is what is called Thanksgiving Day?
Q Oh, Thanksgiving Day.
Q Yes.
A Well, we don't have no holiday down there.
Q You know what Thanksgiving is?
A Yes.
Q You know that other people have a holiday
A No.
Q You did not?
A No, sir.
Q You worked?
A Yes, sir.
Q (By Mr. Carmody) That is the day you had the discussion about the sample wtih the foreman?
A Yes.
Q Is that what happened?
A Yes.
Q On Thanksgiving Day?
A Yes, sir.
MR. CARMODY: All right.
Q (By Mr. Kleeb) I failed to ask you, Mr. Brandy, how much you were earning as a jig man?

A 55.5 an hour.

Q 55.5 cents an hour?

A Yes.

Q And you averaged how many hours a week?

A $4.44.

Q A week?

A A day.

Q A day?

A Yes, sir.

Q How many days a week had you been averaging?

A It depends upon how many days I worked.

Q Well, did you average about three a week or two or did it vary? Did it change quite a bit?

A It is hard to say that. Sometimes two days, sometimes three days, sometimes four. It is hard to say.

Q Could you state the amount you were averaging per week or per month?

A Well, it is $26.00 a week.

Q You were averaging about $26.00 a week?

A Yes.

Q For a number of months; for almost all of 1935, would you say?

Well, not every month.

Q How long would you say you were averaging $26.00 a week?

A Abouth five months.

Q Five months before you got fired?

CHAIRMAN MADDEN: When was this discussion about his not getting as much time?

MR. KLEEB What did you say?

CHAIRMAN MADDEN: When was this discussion about his not getting much time? You have him making $26.00 a week.

THE WITNESS: That started in 1934 and until the time there was a little trouble in the mine and they were short of coal. They had no coal down there

washed for the by-products, and that is the time I got a little more time. The average was five days a week, but before that they gave me, the last time—that time they wouldn't give me, the last time, because they didn't have enough men of experience.

CHAIRMAN MADDEN: But you got all of the time that the jig worked?

THE WITNESS: No, sir; many times the jig was working and I had to stay home.

CHAIRMAN MADDEN: Who worked on the jig?

THE WITNESS: They put some one else on it. They put one of the helpers in my place.

Q (By Mr. Kleeb) Have you worked since November 28, 1935?

A No, sir; not a day.

Q Have you had any income?

A No, sir.

MR. KLEEB: That is all.

Q (By Mr. Carmody) You went to work for J & L in 1910?

A Yes, sir.

Q Where was that—in Soho or the south side or where?

A No; it was in the tin mills.

Q Where was that?

A In the tin mill in Aliquippa.

Q In 1910?

A Yes, sir; the tin mill just started at that time.

Q When was that mill built?

A They finished the mill in 1910 and they started in May and I went in to work in November.

Q You were one of the first men that went to work, or among the first?

A Yes, sir.

Q Are there many men in the mill now that went to work there in 1910?

A Well, not very many.

Q You are one of the old-timers?

A Yes, sir.

Q Do you know Angelo Razzano, who was on the stand here yesterday?

A Yes, sir.

Q Is Angelo an Italian?

A Yes, sir.

Q Are you an Italian?

A Yes, sir.

Q When did you take out your citizenship papers?

A After I came back from the army. That was in the World War.

Q You were in the army?

A Yes, sir.

Q The United States Army?

A Yes, sir.

Q Where did you serve?

A I served in France.

Q In France?

A Yes, sir.

Q How long were you over there?

A Thirteen months.

Q When you came back you took out your citizenship papers?

A Yes; I took one when I was over there in France, but that was lost.

Q Then you took another here?

A Yes, sir.

Q And you finally got your papers

A Yes, sir; as soon as I came back I got my papers.

Q Are there many Italians in the mills down there at Aliquippa?

A Yes, sir.

— Q Are you looked upon as one of the leaders among the Italians?

A Yes, sir.

Q Have you been active among the Italians in other affairs outside the Union?

A Well, I am well known in town, of course—anything that comes up.

Q You know a good many of the foreman and superintendents at the men, don't you?

A I know most of them.

Q Personally?

A Yes.

Q And they know you?

A No, sir.

Q Were you ever a representative under the employee representative plan?

A No, sir; I don't believe in that.

Q You never believed in it from the beginning?

A Well, I never believed anything would be gained by it, but they made me vote two years. Two years they make me vote, but last year I won't vote.

Q When did you become interested in the Union?

A In 1934, in August.

Q What happened in 1919 at Aliquippa? Did they go out on strike, at the time of that general strike?

A No, sir.

Q They stayed at work?

A Stayed at work.

Q There was no strike?

A There was no strike, not even mentioned. If they mentioned strike at that time, they would kill everybody in Aliquippa.

Q The mills were not shut down there?

A No, sir.

Q And during the general strike of the steel industry in 1919, there was no employee representation plan there at that time?

A No, sir.

Q You say you could not mention "Union"?

A No, sir; you couldn't mention "Union" inside or outside the mill.

Q Did the men generally feel that the Jones & Laughlin Company does not want them to belong to the Union?

A Well, the officials of the J & L feel that way, but the men all feel that they want the Union.

Q The men feel that they want the Union?

A Yes, sir.

Q But J & L feel that they do not want the men to have a Union?

A Yes, sir.

Q How do you know that?

A I talked to them. I know almost everybody in that town.

Q How do they know the company does not want the Union?

A Well, the discriminate and tell them now to belong to the Union, not to join any Union, not to vote anything for the men that signed it.

Q Well, knowing that the company does not want the men to belong to a Union, how did you get the idea that you had a right to belong to the Union?

A Well, where did I get the idea—because down in that mill there was too much discrimination among the people, because they had been talking about a Union before. Now, I was waiting on that for a long while, because the Union is a good thing, I think, and always down there didn't treat the people right. They never did.

Q While you were in the army in France, were you fighting to save democracy?

A Yes, sir.

Q Do you think there is any connection between that and the right of a workman to join a Union of their own?

A I suppose there is.

Q You think there is?

A Yes, sir.

Q So that even though you are a member of the Union, you have a right to go to the American Legion meeting, too, because you are an ex-soldier?

A Yes, sir; I have a right to go to any meeting, so far as that is concerned, in the United States.

Q In the United States?

A Yes, sir.

Q Do you think that the fact that you fought in France for thirten months helped you get that right?

A Yes, sir.

Q And insure that right for you?

A Yes, sir.

MR. CARMODY: All right.

Q (By Mr. Kleeb) Mr. Brandy, did not the Jones & Laughlin Company, after the war honor its employees that went to France by erecting a plaque down in Aliquippa with their names on it?

A They didn't give it to me.

Q Did they not put your name on that plaque?

A You mean in the plant?

Q No; in the town?

A In the city, in the village; yes, sir.

Q Did not Jones & Laughlin put that in?

A Well, so far as that goes, I couldn't state, because when it had been put there, I was in the Army. That was before I came back.

Q Is your name on that one in the City Hall?

A Yes, sir.

Q You are one of the Aliquippa men among the employees of J & L, who left the plant and went to war and the town put your name on a bronze plaque?

A Yes, sir.

MR. KLEEB: That is all.

CHAIRMAN MADDEN: That is all, Mr. Brandy.

(Witness excused.)

CHAIRMAN MADDEN: We will recess until a quarter before two.

(Whereupon, at 12:35 o'clock p. m., a recess was taken until 1:45 o'clock p. m.)

AFTER RECESS

(The hearing was resumed at 1:45 p. m., pursuant to the taking of recess.)

MR. KLEEB: Mr. Bozich?

ELI BOZICH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kleeb) Speak up when I ask you questions; speak loudly and slowly so everybody can hear you and the reporter can get what you are saying.

Where do you live?

A 451 Hopewell Avenue, Alequippa.

Q Did you work for the Jones & Laughlin Steel Corporation?

A Not now.

Q I say, did you?

A Yes, I worked.

Q Were you discharged?

A Yes.

Q When?

A The 16th of January.

Q 1936?

A 1936.

Q What were you doing when you were discharged?

A I was a laborer.

Q A laborer?

A Yes.

Q How long had you been a laborer at the Jones & Laughlin Steel Company?

A I was since those primary elections for the company union. They took me off. I was swinger before then.

Q So, from the company union election, in June, 1935, up until January 16th when you were fired, you were a laborer?

A Yes.

Q And before that time you were a swinger?

A Yes.

Q What is that?

A I used to work for the water tender one day, for the fan man another day, and the water softener.

Q You were just sort of shifted around helping here and there?

A Yes.

Q How long have you worked or did you work for the company? How many years?

A From 1928 to now, May.

Q May, 1928?

A Yes.

Q Where did you work before May, 1928?

A I was working in Detroit before that.

Q In Detroit?

A Yes.

Q Had you worked for Jones & Laughlin before that?

A I was working in 1921 to 1923. Then I quit and went in Detroit.

Q You said you quit?

A Yes. Then I came back again in 1926. Then I got a job in Jones in 1927.

Q Jones & Laughlin?

A Yes. Then I was laid off on account of a slack.

Q Slack work in 1927? And how long were you laid off?

A Until 1928 in May and then I get the job back.

Q You were laid off how long? About seven months or six months?

A It was from November to May, something like that.

Q From May, 1928 and up to the—

A No, from 1927 to May, 1928.

Q Yes, that is when you were laid off?

A Yes.

Q And from May, 1928 until January 16, 1936, you worked for them continuously?

A Yes.

Q During that time, that is, from 1928 to the time when you were fired, were you ever discharged for any reason?

A Not until last September.

Q In September?

A Yes.

CHAIRMAN MADDEN: That was 1935?

Q (By Mr. Kleeb) You mean September of last year?

A Yes.

Q What happened in September, 1935?

A They laid me off. They gave me one week off because I got out of pipe—we used to clean this pipe, got lots of dust in them and our foreman told us to clean the dust out of the pipe and I went out before the time.

Q You left work a little ahead of quitting time?

A Yes, but every man—so does the rest of the them.

Q And after doing that, quitting a little bit before time, you got a week off?

A Yes.

Q But you were just laid off for a time? You were not fired?

A No, they just gave me a week off.

Q That was September, 1936? Were you laid off between September, 1935, and January 16, 1936 at any time?

A Yes, I was laid off then for two weeks.

Q When was that?

A On the 18th of September, I got off two weeks.

Q You just talked about one week in September, 1935.

A Then after I worked four days I got off two weeks.

Q Two more weeks in the same month?

A Yes.

Q Why were you laid off then?

A On account I did not come out to work. I was sleeping.

Q You slept in?

A Yes, but I have not been five days in a week and nobody tell me to come out.

Q Did I understand you to mean this: You had only been working four days?

A Sometimes three days; sometimes two days.

Q And they had always told you to come out when they wanted you to come out?

A Yes. Lots of time I come in and they send me home.

Q This particular morning you slept in you had not been told to come out, had you?

A No.

Q And they had been telling you to come out?

A No.

Q They had been telling you before when they wanted you to come out?

A Yes.

Q And you thought because they did not tell you to come out, you were not supposed to?

A Yes.

Q And you slept in?

A Yes.

Q And for doing that they gave you two weeks off?

A Yes.

Q After those two weeks, that was in September, up until the time you were fired in January, were you laid off?

A No.

Q What kind of laboring work did you do?

A All kinds; sweeping floor and all kind of helping those men.

Q You were told all the time what to do, to sweep and help and lift and that sort of thing?

A Yes.

Q What were they paying you for that?

A 47 cents an hour.

Q 47 cents an hour?

A Yes.

Q Could you state about how much you were making a week? What were you averaging?

A About $22 a week.

Q $22 a week?

A Yes, before I got in the labor.

Q Now, what were you getting as an laborer?

A 47 cents an hour.

Q You were made a laborer when?

A In June.

Q That was the company election? Before that you were a swinger?

A Yes.

Q What were you getting as a swinger?

A 60 cents an hour.

Q 60 cents an hour?

A Yes.

Q And as a swinger you were making about $22 a week?

A Yes.

Q What were you making a week after you were a laborer?

A $13 or $13.50 to $15.

Q $13 or $13.50 to $15 a week?

A Yes.

Q Did they give you any reason for making a laborer out of you and not keeping you on the swinger job, not keeping you as a swinger?

A They don't give me nothing; just take me off.

Q Did you ask them why?

A I asked the turn foreman and he says he got orders from the foreman.

Q Did you vote at that company election?

A No.

Q Were you asked to vote?

A They asked me a couple of times and I told the foreman, "I won't vote at the company election."

Q What did he say?

A He going to transfer me on account of change of schedule, and he changed the schedule the next day.

Q Did you ever talk with your foreman or assistant foreman about the union?

A Well, he was talking one time in July, 1935; he asked me how was the union and I says, "I don't know." I won't give him answer or nothing.

Q Did he know you were a member?

A They knew I am a member of union; somebody tell them always but I did not tell them.

Q Did you yourself ever tell any foreman you were a member of the union?

A No, I did not tell no one.

Q You are a member, aren't you?

A Yes.

Q How long have you been a member?

A Since they started.

Q Did you attend the public meeting?

A I attended the meeting—when I work all day I can not attend the meeting. If I do not work I attend the meeting.

Q Did you pass out any union circulars or hand-bills?

A Oh, I passed those hand-bills, circulars.

Q Did you sell union papers' in the streets?

A No, I did not sell those.

Q Then the only reason you think the company

knew you were a member of the union is either because they saw you at these functions, some of thes meetings, or somebody else told them? You yourself did not tell them?

A No.

Q Were you working at the time the Employee Representation Plan election took place? Were you working last June?

A Not exactly that day. I got that day off.

Q You were not working at the primary day?

A No, I got that day off.

Q Were you working on the general election day?

A No.

Q Now, you say you did not vote?

A They sent a man in the house after me.

Q Somebody came after you to your house to get you to vote?

A Yes.

Q And did they take you down to the plant?

A I didn't go. I didn't want to go.

Q You told the driver you could not vote?

A Yes.

Q Was that at the primary election?

A The primary election and general election too.

Q So that on both of those days—they were a week apart, I believe—on each of those days you were not working? And somebody sent a car after you to come down and vote?

A Yes.

Q And you refused both times?

A Yes.

Q Was anything said about your refusing?

A He didn't say nothing but when I came next day to work after the primary election the foreman asked me what for I no want to vote for company. I says, "I don't want to vote, that is all."

Q Did you ever talk with Foreman Creagor?

A Yes.

Q When did you talk with him?

A In some part of July.

Q Of 1935?

A Yes, 1935.

Q Did he have any discussion about Croatians?

A Yes, he told me, "You all Croatians and Serbians—"

Q Wait a minute. Are you a Croatian?

A Yes, I am.

Q And did Creagor talk about Croatians to you?

A Yes, he says, "You Croatians and Serbians and Slavs, none of them, won't vote for company union."

I says, "I don't know for nobody. I don't believe I am talking for those but I am not voting."

Q Did he say anything about making you vote, that he was going to try to make you vote?

A He tried to make me vote and always I don't want to vote.

Q How did he try to make you?

A He says if I no want to vote, no good for me. I said, "Why?"

He says, "I got you marked in two places."

Q What?

A He says he got me marked in two places.

Q What do you think he meant by that? Getting you marked in two places?

A He meant because I am a union man and a Democrat.

Q Did Creagor say anything to you about the Croatians belonging to the union?

A They asked me. I says, "I don't know for nobody."

Q Wait a minute. What did he ask you?

A If those men belonged to the union. He asked if the other men who worked with me, and I says, "I don't know."

Q Did you say that he thought all the Croatians belonged to the union?

A He claimed that.

Q Did he say that.

A Yes, he say that, that all Croatians and Serbians, we all belong to the union, the outside union.

Q Was that said around July?

A Around part of July. I am not exactly sure what day.

Q Will you relate briefly what happened on January 16th or thereabouts when you were fired, and why you were told you were fired, and what happened?

A Well, I came out that morning on 16th January and I asked—always in the morning we have to stay by the check board over there and the pusher he tells what to do and where to go and so on, and that pusher, by name Tony Rubino—

Q Every morning you reported for work and these pushers would instruct you what you were to do that day as a laborer?

A Yes.

Q And was Rubino the pusher who talked to you?

A Yes.

Q What now?

A That I was to sweep the floors over there, and wheel the flue dust out.

Q Did you do that then?

A Then I was sweeping on there and wheeling them things out and around 3:00 o'clock Foreman Creagor came around—

Q Wait a minute. Did it take you that long to clean up?

A Well, I cleaned those things out and the other foreman came around and called me to help him lift her up on a rail.

Q Who was that? Joe Evonkovich?

A Yes.

Q What is he a boiler washer?

A Yes.

Q He asked you to help him?

A Put some rail on 52 boiler and I believe 48.

Q Put some rails on No. 48 and 52 boilers?

A Yes, sir.

Q Did you do that?

A Yes.

Q How long did you work with Mr. Evonkovich?

A 11:00 o'clock or 11:30.

Q Then what did he tell you to do?

A Then I go back to my job sweeping over there.

Q You continued to clean up?

A Yes.

Q How long were you doing that?

A I was doing all day over there until the foreman came to me, Creagor.

Q Now, you finished that job, didn't you?

A Yes.

Q About what time?

A 3:00 o'clock I got finished with it.

Q Ordinarily when you finish up a job what happens? Does somebody tell you what to do?

A If somebody come and tell me go there, I go.

Q If you have your job done and nobody tells you what to do, do you just wait?

A Yes.

Q So you were standing there, you had finished your job and the foreman came up to you?

A Yes.

Q What did he say?

A He says I am lazy, I don't want work, and he asked me what I done today. I says I swept the floor and wheel the flue dust out of there. He says, "That is all you done?" You have nothing else to do?"

Q Did you tell him you were waiting for somebody to instruct you what to do?

A Yes; nobody tells me nothing, I wait.

Q Did you tell Creagor nobody had given you any order what to do after you finished that job?

A Yes.

Q Did you tell him all that you had done that day?

A I told him I was in No. 3 boiler house and helped those Joe lift up the rail on, and he says, "I could finish the job in two hours."

I said, "I could finish them up but nobody tells me what to do."

Q Then did he leave you?

A He says, "Come with me. I want to talk to you."

Q Did you talk to him?

A He says he give me time. I come with him in the office and he give me time.

Q Gave you your notice right there?

A Yes.

Q Did you get one of those notices?

A Yes, got one.

Q Where is it? Did you turn it into the company or have you got it with you?

A I have not got it here. I got it home.

Q That was on January 16th?

A The 16th.

Q Mr. Bozich, do you believe that you were discharged because of your union activity?

A Yes.

Q What makes you think so?

A I think because nobody get off, just myself; nobody get fired, just myself.

Q How many other laborers were there?

A I could not tell you that, for how many. They got a lot of men.

Q Were other men around you doing the same kind of work?

A Yes.

Q Were they fired?

A No.

Q Had they always waited around when they finished a job for further instructions?

A The same thing what I was done.

Q Were you given any harder work to do or different work to do than they were?

A The same thing with those laborers, only the last day.

Q Have you worked any place since January 16th?

A No.

Q Have you had any income, any money coming in at all?

A No.

Q Are you married?

A No.

Q A single man?

A Yes.

MR. KLEEB: Any questions?

CHAIRMAN MADDEN: No.

MR. KLEEB: That is all.

(Witness excused.)

MR. KLEEB: Mr. Boyer?

ROYAL BOYER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kleeb) Where do you live, sir?

A 129 Iron Street. That is my former number, but I have moved to 627 Glenwood Avenue, Ambridge.

Q Is that where you are now living?

A Yes.

Q Don't be afraid to speak up. When did you last work for the Jones & Laughlin Steel Corporation?

A June the 9th—I mean, December the 9th.

Q You got a termination notice that you were through?

A

Q Is that a correct copy, or photostat, rather, of the notice that you got? Will you look at it, please?

A (After examining) That is right.

Q How do you account for this? It says, "Date, 12/9/35", which I judge means December 9, 1935, "total for pay, 40-1/2 hours, 12/15/35"? Explain that.

A That was the pay that was coming, that I had coming, the 12th month. I don't see how in the world they made that mistake there. That is a mistake right here.

Q You had pay coming up to the 9th?

A Yes.

Q And that, "total for pay December 15, 1935", you can not explain that?

A I can not explain it.

MR. KLEEB: I offer that notice in evidence.

(The notice referred to was received in evidence and marked "Board's Exhibit No. 57".)

Q (By Mr. Kleeb) At the time you were fired what were you doing for the Jones & Laughlin Company?

A Making nails, a nail operator.

Q In the nail department?

A Yes, sir.

Q How long had you been doing that? How many years?

A Three years.

Q Three years?

A Yes.

Q How long had you been an employee of the company?

A Ever since 1924.

Q What were you doing prior to the time you worked in the nail department making the nails?

A Well,—

Q Start from 1924 and move on up.

A I was working in the labor gang the other times.

Q The other times?

A Yes.

Q And do you consider the transfer to the nail department a promotion?

A I got a transfer to the nail department.

Q Was it at your request?

A The request of slack work at the labor gang.

Q Speak up. There was slack work?

A At the labor gang.

Q Did you ask to be transferred or did the company transfer you?

A I asked for it.

Q Did you get more money?

A Yes,

Q How much more?

A I got day work and tonnage.

Q What were you earning as a laborer?

A $3.76.

Q $3.76 a day?

A Yes.

Q In the wire department for the past three years, what have you been earning?

A $3.76 and tonnage.

Q And that averaged about how many dollars more?

A $5 to $6 a day.

Q So you have been earning or you were earning between $5 and $6 a day for the past three years, making nails?

A Yes, sir.

Q And how many days a week were you averaging?

A Averaging from three to five days a week.

Q Could you give us an estimate over the past three years what you earned a week?

A $30.

Q You averaged, you would say, about $30 a week for the past three years?

A Yes.

Q Are you a member of Beaver Valley Lodge No. 200?

A I am.

Q How long have you been a member?

A Ever since 1934.

Q That is, when it started?

A Yes.

Q Are you an active member?

A I am.

Q Attend meetings regularly?

A I do.

Q Have you distributed union literature or pamphlets or circulars?

A I did.

Q Have you done so?

A I have, yes.

Q Have you sold union newspapers in the streets of Alequippa?

A I have not.

Q Have you been a member of any picnic committee or committees of any sort of the union?

A I have.

Q Have you ever told any foreman or assistant foreman or any other official that you were a member of this union?

A I have not.

Q You have not?

A I have not.

Q How do you think—why do you think, rather, that they know you are a member other than your public appearances as a member?

A Well, they have seen me in the parade and also at the picnic.

Q Have you had any discussion about unions or union activity with any foreman or with any official of the company since you have been a member?

A No, I have not.

Q Now, in this nail department, you say you make nails? That is in the wire department, I guess, is it not?

A Yes.

Q It is the nail division of the wire department?

A That is it.

Q Do you operate a machine?

A Operate machines.

Q What do you do? Cut off the thin steel wire and make nails out of it?

A Put wire up on a reel and the machine cuts the wire and makes the nails.

Q Now, the day you were discharged was December 9th?

A Yes.

Q Will you state, please, the circumstances surrounding that discharge? What happened? What took place that day?

A Well, four days before that discharge there was some bad nails found in my buggy, which I did not know anything about and the foreman did not know anything about, but four days after that they came to me and told me that I had some bad nails in the buggy. Therefore, they did not find them on the 9th, but it was found on the 5th of that month and I do not know if somebody had slipped them in there or how they got there, but the foreman, the inspector, and the operator—

MR. CARMODY: May I ask a question or two at that point?

MR. KLEEB: Yes.

EXAMINATION BY MR. CARMODY

Q (By Mr. Carmody) What size nails were they?

A 8 penny common.

Q What time did you start to work on the machine that day?

A I started to work at 7:00 o'clock.

Q In the morning?

A Yes.

Q What time did you quit?

A 3:00.

Q How many other nail machines along the line where you were?

A There were 12 in the whole set.

Q Working?

A Yes.

Q All working on 8 penny common that day?

A All on 8 penny common.

Q What do the nails fall into when they fall out of the machine?

A Fall into the pan.

Q Fall into the pan?

A Yes.

Q How big is the pan? How many nails will the pan hold?

A About a foot and six inches long and about six inches wide.

Q Who dumps the pan?

A We do.

Q You dump your own pan?

A Yes, sir.

Q How long does it take to fill the pan?

A Anywhere from five to ten minutes, I would say.

Q So, every five or ten minutes you dump the pan into a buggy?

A Yes, sir.

Q Where is the buggy while you are—

A The buggy is right in front of the machine.

Q How many pans will the buggy hold?

A I do not know exactly how many, but they hold anywhere from 1,200 to 1,500 pounds.

Q How long does it take to fill a buggy from one of those machines?

A It will take anywhere from two to three hours.

Q To fill the buggy?

A Yes.

Q The buggy might have been there two or three hours?

A Yes.

Q It is in front of you or side of you or back of you as you work in the machine?

A This here buggy, what the nails were found in, both of the helpers on the set, we both was cutting the same size nails and putting them in the same buggy.

Q Nails were coming out two machines into the same buggy?

A Off of two helpers. There was two helpers on the machines. Each helper has six machines and one helper had to take care of—

Q Are you a helper?

A A helper, yes.

Q You are one of these helpers who had six machines?

A Yes.

Q Then the nails from all the machines were go into one buggy?

A The nails from one of his machines and one of mine was going into the buggy.

Q Is that the usual way to load buggies, or do you usually load buggies individually, each one having his own buggy?

A No.

Q You share a buggy when you are making the same nails?

A Yes, on account of we get paid for the whole set.

Q Did anybody tell you how far down in the buggy these nails were found?

A It was found about middle way of the buggy.

Q Where is the buggy dumped?

A The buggy is dumped into a rumbler.

Q It is dumped in there to take the fin off?

A Yes.

Q Now, do they inspect the nails before they go in or do they dump the buggy into the rumbler?

A The nails are supposed to be inspected all along.

Q What do you mean, all along?

A The inspector is supposed to be on his job

all through the day running up and down looking in the buggy.

Q Did you see the inspector on that set that day?

A The inspector came there and found the nails in the buggy, and the inspector and the foreman and the operator and myself all examined the machine and could not find none of the machines making bad nails, therefore I do not know where they came from. It may be sometimes they were just put in there for spite work to get me messed up.

Q What I was trying to get at was whether the inspector told you on Thursday, the day he found them, that he had found them in the buggy? Did he find them while the buggy was in your department or did he find them after the buggy was taken out so the nails could be dumped in the rumbler?

A There were some found in the buggy when the buggy was at the machine, yes.

Q At the machine? Right near your machine?

A Yes. All the same time I was down at the upper end when they was found.

Q What was the matter with those nails?

A They were crooked.

Q Were they just like the nails that were coming off the machine when the inspector came over and inspected the dies?

A They were the same size nail.

Q What would make them crooked? What causes crooked nails?

A Crooked nails can either come from the wire going in the machine or—that's about all I know.

Q Could you not see crooked nails when you dumped the pan, if there were crooked nails in the pan?

A I certainly could.

Q How many crooked nails did they find that day?

A They found about ten pounds of crooked nails.

Q Were they altogether, in one place in the buggy?

A Yes.

Q Did it look as if they had been dumped in from another pan?

A Exactly like they was put in there.

Q Yes.

A Like they was put in there.

Q Could a man walk along and dump a pan in without you seeing him?

A They could throw ten pounds of nails in there, yes.

Q They could?

A Yes, by coming up there.

Q Where would they get those crooked nails? Is there a nail scrap pile some place?

A There is a nail scrap pile at the end of the mill where we put all the scrap.

Q Did you look at these nails to see if they were all bright?

A There is nails dropped out there every day. They make bad nails every day and dump them there every day.

Q So that they might have been made yesterday or the day before and they would not have a chance to get rusty, they would still be bright?

A Sure.

Q Did you say anything to the foreman or the inspector about somebody dumping in those nails there?

A I told them.

Q Right there?

A I told him when he came there to get after me about bad nails.

Q I am not quite straight on this. I understood that four days elapsed between the time they found those nails and the discharge, is that it?

A Yes.

Q When did you talk to the foreman about these nails and about your suspicion that they had been

brought in and dumped there for spite work? Did you talk to him when he told you he found them that day?

A I talked to him that day.

Q What happened to the other boy on the other machine, the other helper?

A They had been finding bad nails on him right along and taking them in the office maybe two or three times a week, but wouldn't never do anything to him. But as soon as they found some bad nails in my buggy they went and give me a jacking up about it.

Q Was he a colored boy or white boy?

A He was a colored boy.

Q Who sets the dies in those machines?

A The operator.

Q How many operators are there for the twelve machines?

A One operator for the set.

Q And two helpers?

A And two helpers.

MR. CARMODY: That is all.

CHAIRMAN MADDEN: I want to ask a question.

MR. KLEEB: Yes.

EXAMINATION BY CHAIRMAN MADDEN

Q (By Chairman Madden) If the machine is right, can you make bad nails on it?

A If the machine—I guess I misunderstood you.

Q If the machine is working right, can it make bad nails?

A It can not, not if it is operating right, it can not.

Q You mean, no matter how bad the workman might be?

A The only way it can make bad nails is if the wire is bad.

Q If what?

A The only way they can make bad nails is if the wire is bad.

MR. KLEEB: The wire that is fed into the machine.

CHAIRMAN MADDEN: I know—

Q (By Chairman Madden) Is that what you mean when you said that the wire was going in wrong?

A Yes.

Q You mean the wire was bent?

A The reel got a little—there is a roll and the wire rolls into the dies in the machine and sometimes that wire will slip over, and that is what makes crooked nails and makes the nails cut bad.

Q If the machine is that way, then would all the nails be bad that come out of it?

A They would be bad, yes, sir.

Q And the fault of the workman would be in not seeing that was that way?

A In not seeing it, yes.

Q When was your machine examined for that after these nails were found? Right away?

A Right away.

Q And it was making good nails?

A All the machines was cutting fine.

Q All the machines?

A All the machines were doing fine.

Q In the set?

A Yes.

DIRECT EXAMINATION (Continued)

Q (By Mr. Kleeb) Now, to go back a little bit, had you been, in October of 1935, laid off for a week or so?

A I was laid off for two weeks.

Q And was a reason given for that?

A Well, the reason for that was that the day before there was a buggy of nails left on the machine, at the side of the machine, and there was some bad

nails in there and I started to work and I put a pan of good nails on the bad nails which was left from the day before, when I was not working the day before. I was not working then. The inspector came around to inspect the buggy and found these bad nails in the buggy and he charged it up to me.

Q It was not your fault?

A It was not my fault.

EXAMINATION BY CHAIRMAN MADDEN

Q By Chairman Madden) Did he test your machine then to see whether they were coming through right?

A Well, the operator fixed the dies that morning and the machine was cutting all right. He checked up.

Q Your fault was in putting good nails in on top of bad ones, was it?

A That is what he had against me, putting good nails on top of bad ones.

Q Not that you had made bad nails, but you had mixed up good nails with bad ones?

A Yes.

Q Well, that was a fault, wasn't it?

A Well, in a way it was; in a way it wasn't.

DIRECT EXAMINATION (Continued)

Q (By Mr. Kleeb) How wasn't it?

A Because the foreman always advised us not to put bad nails in the buggy whatever; if we got any bad nails to throw them out on the side.

CHAIRMAN MADDEN: What happened to the other man, the man who had made these bad nails and put them in the buggy?

THE WITNESS: They did not do a thing to him, just give me the time off.

Q (By Mr. Kleeb) Now, in these years that you

have been cutting nails have you been laid off very frequently for that sort of thing?

A No, I have not. It was the first suspension I had had.

Q The first suspension you had had as a nail cutter in three years? The first one was in October, 1935?

A Yes, sir.

Q That was for two weeks?

A Yes, sir.

Q And the next time you were fired December 9th for something that took place December 5th?

A Yes.

Q Had you had many complaints charged against you in the three years, other than these two?

A I haven't; that was the first complaint I have.

Q When you came back from the two weeks suspension in October and worked up until December 9th, was there any discussion between that time about union activity?

A The only discussion was that one of the inspectors, Chester Hodney, told me to pay more attention to my work and leave the union alone and not attend the meetings.

Q Is that the only union discussion that you had in the plant with any of these men, these foremen or assistant foremen?

A Well, the superintendent—we had a meeting just before the union was to get on their feet there in Alequippa and he says not to pay any attention to the union that they are getting up here. He says, "It is no damned good."

Q Did you ever have any occasion to discuss the election in November, 1935, with any official of the company? Not the Representation Plan election, but I mean the general, public election?

A Why, the superintendent told me—

Q Superintendent who?

A Superintendent John Akin, the assistant superintendent, Mr. John Akin, handed me a ballot and says, "Here is a ballot and I mean for you to put the mark where the mark is, and if you don't you will see the consequences, what it will be."

Q What time—where was the mark to be put? How were you to vote?

A The mark was to be put on the Republican.

Q Straight Republican?

A Straight Republican.

Q Was there any occasion for anyone to discuss your union activity with your wife?

A Yes.

Q State when that occurred and what occurred?

A This fellow, Chester Hodney—

Q That is, the nail inspector?

A The nail inspector. He told my wife, he says, "If I was Royal I would not have anything to do with the union whatever. I would not have anything to do with the union."

Q Did he say any more why he would not, or was that the extent of his conversation?

A That was the extent.

Q Were any of the other nail cutters that worked around you put on the job after you were?

A There were. The operator was taken off a job and put on my job.

Q Is he still cutting nails, as far as you know?

A As far as I know of, he is.

Q Are there any other nail cutters still on the job who were hired after you were?

A Yes, there is.

Q And were they on other occasions guilty of producing bad nails or crooked nails, or were you the only nail cutter that ever made bad nails?

A I was not.

Q Have some of these men who are still working been guilty of making bad nails?

A They have.

Q You stated before that you were very active in soliciting membership in the Beaver Valley Lodge No. 200, is that right?

A I was.

Q Were you very active among the colored people?

A I selected about 250.

Q In other words, were you more or less designated by the officers of your union to go among your colored friends and get them to come into the union?

A I was.

Q In other words, the colored membership of the union circled around you? You were the one that went out and talked to them and asked them to join, is that right?

A I was.

MR. CARMODY: How many colored employees are there in the mill?

THE WITNESS: Well, that is a question that I do not believe I could answer.

CHAIRMAN MADDEN: Are there hundreds?

THE WITNESS: There is, I presume—my information would be about seven hundred or eight hundred.

MR. CARMODY: Seven hundred or eight hundred?

THE WITNESS: Yes.

Q (By Mr. Kleeb) How many members would you say you got for Beaver Valley Lodge, colored members?

A 250.

Q 250?

A Yes.

MR. KLEEB: That is all.

MR. CARMODY: May I ask one question? What election did you refer to when you talked about the superintendent handing you a ballot that was already marked and asked you to mark it in those places and vote it? What election was that?

THE WITNESS: The county election.

MR. CARMODY: Beaver County?
THE WITNESS: Beaver County.
MR. CARMODY: All right.
Q (By Mr. Kleeb) Do you have any children?
A Three.
Q Since December 9th when you were fired have you been employed by anybody?
A I have made three days on the Alequippa post office since then.
Q That is the only income you have had?
A That is the only income I had.
Q How much was that?
A That was $9.20.
Q Are you working now?
A I still have a job down there but they are not doing anything.
Q You say you still have the job?
A I am still employed down there but they are not doing anything.
CHAIRMAN MADDEN: You mean at the post office?
THE WITNESS: Yes.
Q (By Mr. Kleeb) Can you go on the job tomorrow? Do you know, is there something there for you?
A They haven't anything to do.
Q In other words, when they have something to do there is a job for you?
A Yes.
Q Right now there is nothing to do?
A Right.
Q And you have no income?
A No income.
MR. CARMODY: Where did you go to school?
THE WITNESS: Milwaukee, Wisconsin.
MR. CARMODY: Did you go to high school?
THE WITNESS: No.
MR. CARMODY: How far did you go in school?
THE WITNESS: The fifth.

MR. KLEEB: Is that all?

MR. CARMODY: Yes.

MR. KLEEB: That is all, Mr. Boyer, thank you.

(Witness excused.)

MR. KLEEB: Mr. Maroll?

GEORGE MAROLL, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kleeb) Where do you live, Mr. Maroll?

A 209 Franklin Avenue.

Q Alequippa?

A Alequippa.

Q And you worked for the Jones & Laughlin Steel Corporation?

A Yes, sir.

Q You were discharged December 5, 1935?

A Yes, sir.

Q I ask you to look at these two photostat copies, this one and this one (indicating), and I ask you if that is the front and back section of your notice that you were discharged?

A Yes, sir; this is the front and this is the second part (indicating).

Q You have stated that the second sheet or the part that is attached is generally not given to the man? How come you got this?

A This came this way, when I came to work it was half past eleven in the night; I come to work; I work always at night from 12:00 to 8:30 in the morning; I come to work and lay my dinner bucket on the bench—

Q Without going into a discussion now of what happened, when they gave you this they forgot to tear off the second sheet?

A Yes. Then he told me, he said, "George, you done with the work." He took me in the office and I says, "Jim, are you going to fire me?"

He says, "Yes, sir." I started to ask him this and this and what for and this and this, and he says, "Well, I can not help it." He wrote the slips and he got excited and when he wrote them slips the top he wrote with a pencil and another one with ink comes down, both together, and the bottom slip is supposed to go to the main office to the chief of timekeepers in the general office, what they call.

Q And he forgot to tear it off?

A He forgot to tear it off. He got excited when I asked him what he fired me for and he put it in my envelope.

Q That is how you got it?

A Yes. He gave it to me.

MR. KLEEB: I offer it in evidence.

CHAIRMAN MADDEN: It may be admitted.

(The photostats referred to were received in evidence and marked "Board's Exhibit No. 58".)

Q (By Mr. Kleeb) Your discharge slip states that you were discharged December 5, 1935?

A Yes, sir.

Q What were you doing at the time you were discharged?

A I did not do anything; I am still on relief.

Q No, no; I mean at the time you were fired, what were you doing for Jones & Laughlin?

A I was a machinist's helper.

Q What is that? What do you do?

A Anything to help the machinists, when they are putting the casting on the machine I am supposed to help them put it up; they got four machinists and I have to help every one. As soon as they finish with the castings I help the one four or five times in the night.

Q Sort of laboring work? You help lift machinery and that sort of thing?

A That is it.

Q How long were you employed by Jones & Laughlin?

A I employed the first time in 1921 to help on the construction work building the 14-inch mill for one year, and I worked for two years after when the mill was finished as head mill-wright in the mill. I got sick of the job and I go back over to Massillon, Ohio, and work for the Central Alloy Steel Company. I go over there and get a job down there. I was working for nine months.

EXAMINATION BY MR. CARMODY

Q (By Mr. Carmody) What did you do there?

A What is that?

Q What kind of work did you do at Massillon?

A Crane operator in the blooming mill.

Q Where had you been crane operator before?

A I was crane operator with the Ford Motor Company in 1913 in Detroit, Michigan.

Q Had you ever operated a crane for Jones & Laughlin before you went to Massillon?

A Yes, I had; in 1922, I guess.

Q In the 14-inch mill?

A I was working in open hearth and 14-inch mill and was working as what you call an extra man.

Q Extra man?

A Yes, they call it swing man.

MR. CARMODY: All right.

DIRECT EXAMINATION (Continued)

Q (By Mr. Kleeb) When did you go back to J. & L. from Massillon, Ohio?

A When I came back from Massillon, Ohio, I was working nine months, and I came back in 1923, I guess—no, 1922. Then I got a job in the 14-inch mill. Then I was working millwright and helped put the

new mill on and I was working until 1924 or 1925 and then they laid the men off.

Q You were laid off?

A I was laid off—I did not get laid off, but I just got my time and go back to Massillon. That was between 1924 and 1925. Then I go back over to Central Alloy Steel Company.

Q After you left Massillon, Ohio—

MR. CARMODY: He went to Massillon twice?

THE WITNESS: No, not twice; once.

EXAMINATION BY MR. CARMODY

Q (By Mr. Carmody) Wait a minute; you get us all mixed up. I thought you went to Massillon late in 1922 and came back to Jones & Laughlin in 1923 and then went back to Massillon in 1925.

A No. I started work in 1921 at Jones & Laughlin.

Q Yes?

A And I worked building the mill, the 14-inch mill, worked until 1924, between 1925, when the mill finished. When the mill started to work I was head millwright, and I quit my job and go to Massillon in 1925.

Q You went to Massillon in 1925?

A Yes, sir.

Q Now, what happened? You stayed there nine months?

A Stayed there nine months.

DIRECT EXAMINATION (Continued)

Q (By Mr. Kleeb) Then what happened?

A Then I was come back and take a job at Jones & Laughlin Steel Company. They gave me a job, the same job, not working on constructing work; I got a job in there in 1926, between 1925 and 1926, I can not remember. I got a job on construction work, the same work I was on.

Q You mean machinist's helper?

A Machinist's helper, doing construction work all around the place.

Q You have been with Jones & Laughlin rather steadily since 1926 or 1927?

A From 1926.

Q Those other places that you worked, Ford and the Central Alloy, were you fired from any of those companies?

A No, sir, Central Alloy Steel, I never got fired, was laid off.

Q Laid off for slack work?

A For slack work.

Q And you have been a machinist's helper since 1926, around that time?

A 1926, yes, sir.

Q From 1926 up until the time you were fired in December, 1935, other than being laid off for slack work, were you at any time discharged by Jones & Laughlin?

A No, sir.

Q Were you given any time off?

A No, sir; they give me time off, you know, slack time.

Q Slack work?

A Slack work.

Q But for any reason, I mean?

A No, not for reason at all; never get it.

Q When you were hired in 1926, the second time you went back to Jones & Laughlin, you were hired as a machinist's helper and told that work was sort of laboring work?

A Laboring work, machinist's helper; that is what it is supposed to get on the slip.

Q And all this time, all these years, that is what you have been doing?

A Yes, sir.

Q What pay were you receiving as a machinist's helper?

A 50 cents I had before.

Q What is that?

A 50 cents, but when they put them on eight hours work—at the time it was 10 hours, they give me five cents more an hour, makes me 55 cents an hour now.

Q How long have you been a member of Beaver Valley Lodge No. 200?

A Since it started.

Q Since 1934?

A Yes, sir.

Q Have you been active in the organization?

A Yes, sir.

Q Have you gone after members?

A Yes, sir; I signed about 200 or 300 members.

Q 200 or 300 members?

A Yes, sir; I get all Baker Street and Oakville Avenue and down to Main Street and I carry newspapers.

Q Did you sell those papers in the street?

A Yes, sir, I sold them papers from house to house.

Q Did the company know you were a member of the union?

A I guess they knowed all right. They surely knowed because the stool pigeons told.

Q Did you ever discuss the union or your membership in the union with your foreman?

A Yes, sir.

Q Tell us when you did and what you said?

A It was 1935.

Q What month?

A August, the month, the night superintendent.

Q What is his name?

A Martin is the name. I was working from 12:00 to 8:30 in the morning, and he came up in the morning and called the turn foreman, Mr. Caldwell, and they told me they wanted to see me before I go home at 8:30.

At 8:00 o'clock Bill told me, he said, "George, Mr. Martin wants to see you before you go home." I said, "All right."

I waited over until 8:30 and he is not come in the office and I see Mr. Caldwell. Caldwell told me, he says, "You better go down there in the blooming mill engine room; maybe you will find him over there." You know, he is the master mechanic all over the plant and he says, "You may find him over there; no use spending the time here."

I said, "All right, Mr. Bill." I walked down to the blooming mill and I find him in the engine room. I find him and started talking to him, and he says, "Well, George, I got something news for you."

I said, "What is it? What kind of news, Mr. Martin?"

He pulled out a big sheet of paper like that (indicating), and he says, "Well, I got a report from the police department, J. & L.'s, you were on the street doing this and this and talking to them fellows and asking them fellows, you know. I do lots of favor for you, you know, you lay off the job construction work I put you in machine shop work and give you steady job. Why don't you do favor for me?"

I said, "I do favor for you. I work when you give me work."

Q What favor did he ask you to do?

A He asked me, "Don't go with the union; don't join with union; don't talk with them fellows joining the union; don't carry the newspaper and this and this."

Q Did he tell you not to do that?

A He told me not to do that, and he make me mad. I told him, I says, "Mr. Martin, any time any more fellows going to ask me if I belong to the union or not, I am going to tell you the truth; I am not belong to the union yet." I was belong to the union but I would not tell him, I was afraid I would lost my job.

Q Why were you afraid you would lose your job?

A I was afraid I would lose the job because Phillips lost his job, the president of the union, and then I was afraid lost my job, the same as anybody else.

He says, "Well, suit yourself." Then I walk out and go home.

Q Do you own your own home?

A No.

Q Did you rent it?

A Yes.

Q Were you renting a home in May or June, 1935? Were you renting in June of last year?

A Yes, I rented, yes.

Q Did you have occasion to talk about your water bill that you owed?

A Yes, sir.

Q Will you explain what happened?

A That is when I was living in 122 Baker Street. The land company—it was the time I was working one or two days in a week and I could not make any living, got four kids and a wife, and I did not pay that water bill. I had that water bill for a year and did not pay it.

Q Who owned that house, the Woodlawn Land Company?

A No, the fellow's name is George Dunco. He owned that house, but I guess he did not pay it.

Q And because of slack work and no money to keep your family you could not pay the water bill?

A I could not pay half the rent.

Q And Dunco was after you for it?

A Yes.

Q Then what happened?

A Then Mr. Martin called—before that time, when he called me over for the union, he called me in front of him before I go home. The same time Bill Caldwell told me, "Don't go home before see Mr. Martin. We wants to see you." That was before when he asked me for the water bill.

Q That was in June?

A That was in June before the company election.

Q Before the company election?

A Yes.

Q You talked with Martin again?

A Yes, sir.

Q What took place then? What did he say?

A Then I go to see him and I see him in the same place in the blooming mill engine room. I told him, "What you want to see me?"

He says, "George, I want to see you." He said, "Do you know you owe the Woodlawn Land Company for water bill $10?"

I says, "Yes, I do."

He says, "Why don't you pay it?"

I says, "You know, Mr. Martin, I work only one day or two days."

He says, "That makes no difference. Why don't you go give them $1 or $2 a week or so?"

I says, "I can not give them nothing because he chased me out of the house, the fellow run me out of the house."

Q Just to get the picture straight, you told me that George Dunco owned the house?

A Yes, sir.

Q Why would you be paying the water bill to the Land Company?

A That is the Land Company water.

Q The Woodlawn Water Company?

A That is all the same thing, Woodlawn Land and Water Company. It is all together.

Q Did Mr. Martin at that meeting say anything to you about the union, keeping away from the union, after he finished talking to you about the water bill?

A No, he didn't say nothing that time.

Q Did he ever tell you that the union members were a bunch of radicals and crooks?

A Yes, he did.

Q When did he tell you that?

A He told me the time in August when I was in front of him the last time. He told me that time, "Keep away from them, and this and this." I would not told him I am union or nothing.

Q Did he tell you the union members were a bunch of crooks and radicals?

A Yes, sir, he did.

Q That time in June, 1935, when you talked with Martin about the water bill?

A Yes, sir.

Q And the time in August, 1935, when you talked with Martin and he told you the union members were radicals and to stay away, are they the only two occasions since you belonged to the union that you have talked to the foremen or officials about the union?

A No, I didn't talk anything about it. The day it was the election day—

Q The day of the company union election?

A Yes, company union election day on the 12th of June.

Q Who did you talk with then?

A I did not talk with them. They tried to make me go vote.

Q Vote for union representatives?

A Yes.

Q Did you vote?

A I did not vote that day, no. The turn foreman, he is like a kind of pusher, his name is Rudy, he is working on lathe machine and I was working on hydraulic drill press. He come up 8:00 o'clock in morning and he says, "George, you better go vote."

I says, "For what? I got nothing coming from the company representatives. He can not do nothing for me." I said, "I don't want vote for nobody."

The he said, "You got to go vote, George. You know damned well those—" he called them "sons of bitches"—"are going to tramp on you."

Q You say you did not vote in the primaries?

A No, sir.

Q Did you vote in the general election?

A Yes, I voted in the general election. I go in the general election the same time they come up and told me they are going to tramp on me. They said, "You better go vote; it makes no difference which way you vote, what you vote, even if you vote for Mae West."

I says, "All right, I will go over there on the polls", and I go through and I just grab that sheet, what you call the ballots, and I roll them down and I just put "B. S." and throw them in the box and walk out.

Q You put "B. S." on it, folded it up and put it in the box?

A Yes.

Q And the foreman said if you did not vote, what would they do?

A They told me they were going to tramp on me.

Q He said you better vote, even if you vote for Mae West, or whoever you vote for, you better vote?

A Yes, it is just so you vote.

Q Did the company change your job in December of 1935, around the first of December? Did they put you on the hydraulic drill press?

A Yes, sir, they kept me going on the hydraulic drill press for six months.

Q That hydraulic drill press is not the kind of work you had been doing?

A No, I not supposed to do that job if you go by rights. That is a machinist's job.

Q Explain what happened on Sunday, December 1st, when the company put you to work on this hydraulic drill press.

A I came up to work and Gene Walker says, "George, I got new job for you tonight. I got those pins for the housing." He means them pins about four inches around and about three feet or four feet long, I guess. He says, "On each pin you are supposed to drill

three holes on it and the bottom hole is supposed to be a taper, three-quarters of an inch between top and bottom." That is meaning three-quarters of an inch space like that (indicating) between the drill and the drill makes a little taper down there to raise them pins up. "I don't know nothing about machinist's job, Gene," I says. "My God, you know I am not a machinist."

Q That is, you had a piece of steel with a flat bottom?

A Yes, on a table.

Q It would be a sort of angle up in the air?

A Yes, the drill goes through.

Q And it makes a tapered hole?

A Yes.

Q What do you know about that?

A I didn't know anything about it. He told me I have to do it and I tried the best I can.

Q Had you ever done that kind of work?

A No, sir.

Q And did you tell him that?

A I told him the first time he told me to do that.

Q He told you to go ahead and operate this hydraulic drill press?

A Yes.

Q And he gave you the dimensions of the tapered hole?

A Yes, sir.

Q And you knew nothing about it?

A I knew nothing about it.

Q You were not hired to do any skilled work?

A No. I was talking to the other machinists and I was ashamed of myself working the drill press for 55 cents an hour while the press men in the daylight get 70 to 80 cents an hour.

Q In other words, a drill press worker is a skilled worker and he gets around 80 cents an hour?

A Sure.

Q And you were getting 55 cents an hour?

A Yes, sir, that is all.

Q Did you mention that fact to the foreman, that drill pressmen got so much more an hour than you?

A I asked him more money if he put me on that drill press work about three months before that. He says, "You got more than the other helpers, 5 cents an hour."

Q And did he tell you to operate that press?

A Operate the drill press, yes.

Q How many holes did you drill?

A I drill in each pin three holes.

Q Three holes in each pin?

A When I first started work they claim that I was mistaken, I was supposed to drill the bottom hole tapered and the rest of them, the other two, I had to drill straight up. I did not do that. I drilled all three of the damned things together in the slot machine.

Q How many of these pins did you drill?

A Six of them.

Q That is three holes in each of those?

A Yes. They just claimed I spoiled the first one.

Q That was Sunday, December 1st?

A Sunday, December 1st.

Q What happened the next day?

A The next day they don't told me nothing. I worked another job.

Q You did not operate the drill press?

A Yes, I operate the drill press but I drill some kind of washers.

Q Was anything said to you December 2nd?

A They didn't say nothing.

Q That is Monday that nothing was said?

A That is Monday.

Q You worked the night turn?

A I worked the night turn.

Q And on Tuesday, December 3rd, what happened?

A They never tell me nothing there.

Q You worked on the same drill press?

A The same drill press; worked on them washers.

Q But you did not make the tapered holes, this skilled work?

A Yes, sir.

Q And the work you did after that you were able to do?

A Yes, sir, I have to do it. If you don't do it they fire you.

Q The work that you did on Monday and Tuesday, this drilling with the hydraulic press, was skilled work, was it not? You would call it skilled work, would you?

A No, it is not skilled work on the washers. It makes no difference what you do.

MR. CARMODY: What he means is it is the simplest job you can put on a drill press.

THE WITNESS: Yes.

Q (By Mr. Kleeb) What happened the following Wednesday?

A When I came up Wednesday night it was fifteen minutes to 12:00. I came in the shop and put my check on the box where you drop them checks in the box and I stopped to change my clothes. Gene Walker came up, my turn foreman in the night, and he hollered to me from the door and he says, "George, wait a minute; don't change clothes."

I says, "All right." He came to me and he said, "You are done now."

I says, "What do you mean I am done?"

He says, "You done with the job."

I says, "What's the matter?"

He says, "You come up in the office." He would not tell me what is the matter. He says, "I give you your slips", the pass to take the tools and everything home.

I says, "All right." I go in the office and he writes them two slips, them money order, what you call it.

Then he write both of them and I tried to told him what he fire me for and this and this, you know, I got four kids and family, you know, and no money, no nothing, I owe the company store $52, what I got coming the company would charge everything, I didn't have no money to leave now.

He says, "I can't help it." He says, "I got orders to order you out of the mill." Then he got excited and give me both them slips. He is not supposed to; he is supposed to give me the top one and the bottom one he is supposed to send over to the main office, the general office, what you call it.

Q How many other machinist's helpers are there?

A They got in the daylight about six, I guess, and in the night just was me, one helper.

Q You were the only one at night?

A The only one at night, and three machinists.

Q Do you know whether any of the other machinist's helpers were told to operate this press?

A No, sir.

Q Were any of these other helpers skilled work to do?

A No.

Q Have any of the other men been discharged?

A No, sir, they are still working, all.

Q Are any of the other machinist's helpers very active in the union?

A Not very much. I know about four or five in the union already; I don't tell them anything, don't go no place.

Q They are members but not active members?

A Yes, sir, that is right; they don't act like I do.

Q Did you discuss your discharge with Captain Harris of the J. & L. Police?

A Yes, sir.

Q Did you talk to him after you were fired?

A Yes, sir.

Q When did you talk with him?

A I was getting fire, this was on—

Q You were fired on Wednesday?

A I was talking to him Thursday morning and I asked him what I got fired for, what for, and this and this, and he would not tell me. He says, "You didn't get fired for the union; you got fired for you don't do right job."

I says, "That is all right. I see that is what is coming because Mr. Kelly told me when we was parading the day before Labor Day and I was walking in the parade—"

Q In the parade?

A Yes. And Kelly and Donnelly was both in a machine.

Q Kelly and Donnelly from the J. & L. police?

A Yes. When we came to Franklin Avenue from Oakville Avenue they was right in front of us with a machine. When we walked 16 blocks from there they turned around and stood in front of Plant 3. Donnelly was standing outside and Kelly knew me and Donnelly knew me. They says, "Hello George. Aren't you tired of walking?"

Then I told him, "Aren't you tired taking pictures of us?" Then I started to leave.

Q That was a Labor Day parade?

A That was Sunday.

Q It was Labor Day, 1935, or 1934?

A 1935.

CHAIRMAN MADDEN: What did you mean by the picture?

THE WITNESS: He told me, am I tired of walking. I knew he moved around like because I seen him twice, and when we came down to Plant 3 he was standing there looking at us, that is the J. & L. police.

Q (By Mr. Kleeb) Were they taking pictures?

A They didn't take any pictures and I just told him that because he told me, didn't I get tired of walking.

Q What did you say you were averaging a week as a machinist's helper?

A I had about $24, I guess; $24.20, something like that.

Q $24.20 a week?

A Yes, if I work every day, make twelve days of pay.

Q Are you working now?

A No.

Q Have you any income?

A Nothing; I am on relief.

Q You are getting relief?

A Yes, sir.

Q How much are you getting?

A I get $6.50 a week.

Q And you say you are married and have four children?

A Four children, yes, sir.

EXAMINATION BY CHAIRMAN MADDEN

Q (By Chairman Madden) That is not work relief?

A No, I did not work for it.

Q You just get the money?

A Yes.

EXAMINATION BY MR. CARMODY

Q (By Mr. Carmody) Just one question. Did you look at this termination notice that they handed you?

A Yes, I look, yes. I opened it up and look it over. I did not turn that in the office, though.

Q Did you look at the rating they gave you?

A Yes, I look at it.

Q Did you talk to anybody about it?

A I talked to my representative, Mr. Albert.

Q Did you ever talk to the company about it?

A No, sir.

Q The only thing good that they could find about you was that you were punctual and worked regularly. Everything else seems to be either fair or unsatisfactory or hopeless?

A Hopeless?

Q Hopeless, yes. That is what has been checked here for your ability.

A Well, they have to put on some kind of excuse. They can not fire me this way.

Q When did they find that out? You went to work there in 1921?

A That was in the first Sunday in—

Q I mean, when did they find out that you were hopeless?

A They find it? I don't know when he find it.

Q When did they find out that your workmanship was unsatisfactory?

A I do not know when is that either. He never told me anything about.

Q Did you ever learn the machinist's trade?

A No, sir. I work with machinists but I still was a helper all the time, did not get the pay. They paid me the helper's wages.

Q You never served an apprenticeship?

A No, sir.

Q Where did you learn this millwright work you talked about?

A On the mill.

Q You mean at the J. & L. mill?

A Yes, sir.

Q What kind of mechanical work had you ever done before you went to work for J. & L.?

A I worked on automobile shop the first time. When I came from the Old Country I was working at Steelton two months, Steelton, Pa.

Q Yes, the Pennsylvania Steel Company?

A Yes.

Q What did you do there?

A I was working in the foundry for not quite two months.

Q Steel foundry or iron foundry?

A Steel foundry.

Q What did you do in the steel foundry?

A I was helper molder.

MR. CARMODY: All right.

DIRECT EXAMINATION (Continued)

Q (By Mr. Kleeb) You worked for the Firestone Rubber Company too, didn't you? Did you work for Firestone?

A Yes, I worked in Firestone.

Q That was some years ago, was it not?

A That was 1918.

Q What did you do for them?

A I was working on the mold polisher making the diamonds in the tires.

Q Were you laid off there or did you quit?

A I was laid off.

Q Slack work?

A Slack work.

MR. CARMODY: And you operated a crane in the Ford works?

THE WITNESS: Yes, sir.

MR. CARMODY: Was that Hyland Park or Dearborn?

THE WITNESS: Hyland Park.

Q (By Mr. Kleeb) I just wanted to call attention to your occupation. The company called you a fitter. What is a fitter?

A A fitter is this—

Q What does he do?

A Is the same thing like fitting all the machines together. Any pieces that are made new they want to set the machinery together and put them together, they make machinery on the plant and stand it up in condition for the work, and that is a fitter. A fitter

has got more pay than any machinist. Machnists get about at least 85 cents an hour and the fitter is getting 90 to 99-1/2 cents an hour.

Q Were you ever a fitter?

A No, sir.

Q Did you ever get 99-1/2 cents an hour?

A Never.

MR. KLEEB: That is all.

CHAIRMAN MADDEN: We will recess for five minutes.

(A short recess was taken after which proceedings were resumed as follows:)

MR. KLEEB: Mr. Volpe?

ANGELO VOLPE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kleeb) Where do you live, Mr. Volpe?

A 139 Oakwood Avenue, Aliquippa.

Q And you were working for the Jones & Laughlin Steel Corporation before July 31, 1935?

A Yes, sir.

Q Were you discharged July 31, 1935?

A Yes, sir.

Q Is that a correct photostat of your discharge slip?

A (After examining) Yes, sir.

MR. KLEEB: I offer it in evidence.

CHAIRMAN MADDEN: It may be admitted.

(The photostat referred to was received in evidence and marked "Board's Exhibit No. 59".)

Q (By Mr. Kleeb) How long prior to that date had you been working for Jones & Laughlin Steel Corporation?

A I worked from 7:00 o'clock—
Q No, No; how long?
A From 1914.
Q 1914?
A Yes.
Q What did you do in 1914?
A I work at labor at the cold roll department.
Q How long were you doing that?
A I worked there for about two years, greaser.
Q Two years as a greaser?
A Greasing necks at the roll.
Q Greasing the necks of the rolls?
A Yes, on the rolls.
Q Then you were promoted?
A I was promoted as a rougher.
Q As a rougher?
A As a rougher.
Q Did you get more money?
A More money; worked on tonnage.
Q Were you promoted after that?
A After that I got sick.
Q What?
A I got sick that time.
Q When was that?
A The last part of 1917.
Q For how long were you away from employment?
A Well, I was sick about a month and a half.
Q Did you go back to work?
A I go back to work.
Q The same work?
A The same work. They would not take me off that job.
Q How long did you continue with that work?
A I worked another month on that and I quit.
Q That was in 1917?
A 1918, it was.
Q Did you go back to work for them?

A I went to work at the A. & S. to get some air, the Aliquippa & Southern Railroad.

Q Doing what?

A 1918.

Q Doing what?

A Laborer.

Q When was the next time you went back with J. & L.?

A The last part of 1918.

Q You were just with the A. & S. a short time?

A Just short time to get the air for my health.

Q So, in 1919 it was that you went back with Jones & Laughlin?

A Yes.

Q What did you do then?

A I went to work as laborer.

Q Were you promoted after that?

A I was promoted to weigh master.

Q When was that? 1919?

A 1919 up to 1921, the first part of 1921.

Q Did you get more money?

A More money.

Q Then were you promoted again?

A In 1921 I got promoted to foreman.

Q Night foreman?

A Night foreman, cold roll department.

Q Night foreman, cold roll department?

A Yes, sir.

Q And again your pay was increased?

A The pay was increased; it was 72-1/2 cents an hour.

Q From what?

A From 58 cents.

Q Were you ever made a day foreman?

A I never was made day foreman but I was night foreman for nine years.

Q Night foreman in cold roll department from 1920 to 1929?

A From 1921 to 1930.

Q 1921 to 1930? Then was your job changed?

A Then 1930 they dumped me out; they took me off there.

Q What did they give you?

A They gave me a job as laborer.

Q Why?

A They had some other guy to work on the place.

Q Had he any seniority over you?

A The reason was this: That time I was working steady night time and a new law came out you could not work more than six days a week.

Q A Pennsylvania law, wasn't it?

A A Pennsylvania law. So they wanted to get rid of me some way or another—

Q They what?

A They wanted to get rid of me, so they had a fellow by the name of Arthur, he was an American fellow, and he was going out every night with the foreman and drinking and one thing and another. They had to make room to get a better job for him.

Q They were good pals and the foreman wanted to make some place for him?

A Yes.

Q All right, what happened?

A So, they got me to work one Sunday before Easter on daylight. I worked that Sunday for him, and the day foreman they laid him off that Sunday and I worked in his place. Then I had to go back on Monday evening again.

Q Yes?

A I went back to work Monday evening again and I worked the week night time. The following Sunday was Easter Sunday, so he wanted me to work on Easter Sunday again, but I told him my Easter only came once a year.

Q And you had worked a six day week, had you?

A Yes.

Q And you refused?

A I refused to work that Sunday. It was Easter Sunday. I told him if he wanted me to work Sunday why not put me to work week about, so that I worked six days a week with no trouble.

Q You had worked the previous Sunday?

A Yes.

Q And for that reason you were discharged from that job?

A They finished the month to break the new man in. At the end of the month they told me I was discharged but they gave me job as laborer.

Q So, for your refusal you were demoted to laborer?

A Laborer.

Q Were you later transferred to the tube mill?

A I worked as laborer a week at the cold roll department and I told the assistant superintendent before the week was over I could not make no living on that job with a family. He told me, "If you see some other job with more money go ahead after it and I give you a transfer."

Q Did you find another job?

A I find another job at the tube mill plant.

Q That was in June, 1930?

A June, 1930.

Q Have you been there since?

A I have been there since.

Q What do you do in the tube mill?

A Run a crane; crane operator.

Q Did you immediately start to operate a crane in June, 1930, or were you trained?

A As soon as I went in there in June I went to work on the crane right away.

Q Have you ever operated a crane before?

A No, sir.

Q You say you just had to learn?

A Two days.

Q By experience?

A By experience, yes.

Q Up until the day you were fired you were a crane operator in the tube mill?

A Yes, sir.

Q During that time had your superiors or your bosses ever complained about the way you operated that crane?

A No, sir.

Q How many lay offs for reasons other than slack work did you have during that time?

A I got laid off once.

Q Were you ever laid off for slack work?

A Not for slack work. We was to lay off for slack work, but we only worked really one or two days a week.

Q You were not laid off, your time was just reduced?

A Yes.

Q You just mentioned you were laid off for reason on one occasion in five years?

A Yes, sir.

Q When was that?

A April 29th.

Q What year?

A 1935.

Q What happened to cause that lay-off?

A The morning of April 29, 1935, I went to work in the morning and they put a different crane on, it was not my regular crane at all that was working. The floor boss on No. 8 floor, by the name of Joe Pirolli, he had the hooker work on the crane in the morning—

Q May I interrupt you? To clarify the picture, there is one man who operates the crane and that is your job?

A Yes.

Q And there are two hookers?

A Two hookers.

Q Which hook the cables around the load for the crane to lift, and then there is a crane director that tells you to hoist? Is that generally the picture?

A We did not reach that point yet.

Q I mean, is that generally the picture?

Q All right, tell us what happened on this day in April.

A On the 29th of April he sent the hookers home to get more tonnage, cut down the man hours. So, during the time of the day he picked any man at all hooking up on the crane, not the regular hookers, men who never had been a hooker before.

Q On this particular day the man who was doing the hooking was inexperienced and did not know much about hooking?

A He didn't know much about hooking.

Q What happened?

A I went to lift a seamless pipe lift about 40 feet long. We have spreaders on that crane and one block. It is made like a scale with two cables on it. So, this man hooked up the lift with a cable. You hold the cable on one side and motion with the head to take it up because he could not give a hand signal with his hands.

Q He raised his head?

A He raised his head and told me to lift it up. I took the lift up and I saw it bend at once at one end and I lowered it again.

Q Was that because the other end of the tubing of the load was not hooked?

A Both sides were hooked up but the way the cranes are made with a block in the center and the steel spreader about ten feet long, and they have two cables hooked one on each side,—so, he hooked up both of them on the load and he made me take it up the first time. It was going bad the first time the same way like a scale more heavy at one end. So I left the lift down because I did not want to hurt anybody. I

lowered it down and he stretched his cables far out, and at the same time he made a motion with his head to take it up again. I took it up, and the safety man happened to pass along there and he saw it and he bawled me out.

Q The way the load was hooked up, should that man not have given you the signal?

A He should have given a signal with his hand but he could not do it.

Q Whether he gave the signal with his hand or with his head, did he give you the signal too soon?

A He did not give it too soon. He waited until he hooked it up.

Q What was it the inspector saw, then?

A He bawled me out on account of putting the lift up with his head, when he made the motion with his head to take it up. He bawled me out on account of that.

Q The thing you did wrong was to make a lift with your crane by a head signal rather than a hand signal?

A Yes.

Q Is that the only mistake you made?

A That is the only mistake.

Q And a state inspector happened to be going by at that time?

A Going by at that time.

Q Are lifts often made by head signals rather than by hand?

A They are made right along.

Q That is because the men are using their arms?

A Yes.

Q You got a 15-day lay-off for that?

A I got a 15-day lay-off.

Q That was April, 1935?

A April, 1935. When I went back to work on May 1, 1935,—

Q This job of operating a crane is called skilled work, is it not?

A Yes, skilled work.

Q And what pay do you get for that?

A 55 cents an hour.

Q What is your reputation around the plant for being a crane operator? A good reputation?

A I had a good reputation so far until the last day I worked.

Q You were operating a crane for five years, were you not?

A Yes, sir.

Q In the same department?

A Different departments all the way around.

Q Did any other craneman around that time make similar mistakes and they were never laid off? Did they make the same kind of mistakes?

A Yes, cranemen still lifts many times and never get laid off yet.

Q Their mistakes were worst than yours?

A Yes.

A And they were not even laid off a day?

A They were not laid off at all.

Q How many cranemen are there in this tube mill?

A 28 cranemen. 56 in the gang.

Q 28 men, each of whom operates a crane or can operate a crane?

A Yes.

Q How do you stand on seniority? Are there very men who come ahead of you in that department of cranemen?

A I do not understand.

Q Are you the oldest craneman in the tube mill?

A I am not the oldest.

Q How many men are older than you in the tube mill? I do not mean in age.

A Around about 15.

Q You say 15 of the cranemen in the tube men were there before you?

A Yes, sir.

Q And the others have been taken on since?

A Yes.

CHAIRMAN MADDEN: How many others are there?

MR. KLEEB: There are 28.

THE WITNESS: 28 cranemen.

Q (By Mr. Kleeb) Are all those cranemen regular or are there some extras?

A They work them extra too. There was six extra cranemen.

Q Six of the 28?

A Yes.

Q So that there are 15 ahead of you, you are about 16th?

A The 16th, yes.

Q Do you know whether or not any new cranemen has been hired to take your place?

A There is a new one just started not long ago, a few of them on the same job.

Q I understand that some old craneman made quite a serious mistake after you were fired operating a crane, is that true?

A That is true.

Q Who was it, do you know? Do you know his name?

A I could not tell you about all those names. I know the first name and don't know the last name.

Q Was the craneman there a while before you were there?

A Yes.

Q What was the mistake he made that you heard of?

A He spilled a lift at the shipping point.

Q Is that in the shipping department?

A The shipping department.

Q Was the lift up in the air when it dropped?

A Yes, sir.

Q Did it almost endanger—did it endanger anybody's life?

A Yes, it was in danger of killing about 15 men one day.

Q You say it almost hit these men?

A Yes, sir, about 15.

Q Was anybody injured?

A Nobody injured. The craneman's name is John Pizak.

Q Is he still operating the crane?

A He still operates a crane.

Q Still working?

A Yes, sir.

Q You were fired July 31st?

A Yes, sir.

Q Will you explain what happened? What occurred that caused you to be fired around that time?

A I was fired on account of the reason for union activities the most.

Q I know, but I want to know what happened. July 29th came on a Monday?

A July 29th, the Monday, I worked daylight.

Q You worked the day turn, on your regular crane?

A My regular crane.

Q You worked a regular turn, that day?

A There didn't happen anything that day.

Q The next day?

A On Tuesday morning I went out to work and they sent me home.

Q Who sent you home?

A Lang, the foreman.

Q Lang?

A Yes, A. L. Lang.

Q Were you told to go back?

A At 3.30 in the afternoon.

Q You went back in the afternoon?

A I went back 3:30 to 12:00.

Q What happened?

A He put me to work on No. 18 crane. The rea-

son he put me to work on that crane was he had six cranemen—

Q New cranemen?

A Five new ones. I was the oldest one.

Q When you say five new ones, do you mean—

A About a year or year and a half working in the plant.

Q They were the extras?

A The extra men. He asked which one of the men would operate No. 18 crane and they all refused to operate that crane.

Q Why?

A Because the crane is a dangerous crane to work.

Q Would you say it is the hardest one in the mill to operate?

A It is the hardest.

Q The hardest one in the tube mill?

A Yes. Then the foreman told me to go on that crane. I told him, "I will run that crane tonight if you put a good hooker on."

Q You asked for one good hooker?

A One or two. If you have one, it is all right.

Q You said, "All right, I will operate that No. 18 crane if you give me some good hookers"?

A He told me to go ahead.

Q What turn were you to work this crane?

A 3:30 to 12:00, and, "Don't forget to be out in the morning."

Q What time?

A 7:00.

Q You were told 3:30 p. m., until midnight on the toughest crane in the tube mill and then to report the next morning at 7:00 o'clock?

A Yes.

Q You worked that night and did you report the next morning at 7:00 a. m.?

A Yes, sir. At 7:00 a. m., instead of putting me on my regular crane, he put me on that same crane.

Q The tough No. 18?

A No. 18 crane, and the regular man who worked on that crane, his name is John Lingo—

Q Where did they put him?

A They put him on No. 12 crane.

Q Is that a tough crane?

A That crane had been idle for two years.

Q And Mr. Lingo, the regular operator of No. 18, had been working on the night shift with you?

A No, he was working the daylight.

Q He was not on that 3:30 to midnight shift that night?

A No.

Q So, the next morning he is put on this No. 12 which was not operating very much?

A It was not operating at all.

Q And you were put back on No. 18, which was a very busy crane and a tough crane?

A Yes, sir.

Q All right, you worked that crane starting at 7:00 a. m., in the morning of Wednesday, July 31st?

A July 31st.

Q What happened?

A Around about 9:00 o'clock in the morning he got the crane director, he brought him in the office with the superintendent, John Markey—Frank Pitts is his name, the crane director.

Q You were operating the crane—who was the crane director?

A Frank Pitts.

Q A colored man?

A Yes.

Q And he had two hookers, Mr. Milliner was one.

A Milliner, and the other, I don't know his name.

Q Milliner is colored and the other man is white?

A Yes.

Q Go ahead.

A They took them in the office and they kept the

crane director in there for about two hours and a half and told him a lot of stuff that they wanted to get me out of the plant that day.

Q About what time in the 7:00 a. m. turn did this take place that these men were called in the office?

A About nine o'clock.

Q Had anything happened on your crane between 7:00 a. m. that morning and 9:00 a. m. that was wrong?

A No.

Q Did you personally know of any mistakes that you made? Did you make any mistake?

A I did not make any mistake at all because I know exactly.

Q Did you make any mistake, say, any time during that day's work?

A No, sir, I did not make no mistake.

Q Who was hooking and directing while Pitts and these men were called into the office?

A They picked up different men on the floor to hook up.

Q How do you know they were in the office?

A Because I saw when they go right straight over. The office is right near that.

Q Did Pitts or any of the men tell you what was asked of them at that office?

A Yes, sir.

Q What was it?

A Pitts came over to me and told me, and says, "They are going to try to get you out of this plant today, fire you."

Q Did he tell you that they had asked him?

A They asked him many questions.

Q What were those questions?

A They say they don't want this man working in the mill and, "We will try to get some excuse to get him out of here."

Q Did Pitts tell you the superintendent—

A Yes, the superintendent told him like that, so

when he came back he tell me like that. It was not ten minutes later they called him back in the office again, Pitts, and they kept him in the office until a quarter of one. They made him sign some kind of a paper, I don't know what paper it was, whether it was affidavit or what it was, I don't know. After he signed this paper my foreman came over about a quarter of one, A. L. Lang.

Q Before that occurred was Milliner, the colored hooker, and the other fellow, the white man, who was a hooker, were they called into the office too?

A They was called into the office once about 9:00 in the morning.

Q Were you told that you were accused of striking a man in the stomach with a load?

A Yes, they told me.

Q Who told you that?

A The superintendent, Markey.

Q Tell us what happened when the superintendent came over to you.

A When Mr. Pitts came over to me he says, "They want you down at the office." I went in the office and had the time made up already, and Markey, the superintendent, he told me, "You are discharged."

I said, "For what reason?"

He said, "You hit a man in the stomach making a lift without a signal."

Q Making a lift without a signal?

A That is what he say.

Q And you hit a man in the stomach?

A Yes.

Q What else?

A "That is the reason you are discharged."

Q The slip was all made out?

A The slip was all made out and they had a check all ready.

Q That was handed to you?

A They handed it to me.

Q Did Pitts tell you whether Markey asked him whether you hit anybody in the stomach?

A No, sir, they did not ask me that.

Q Did they ask Pitts that?

A No, sir.

Q They didn't ask anything about hitting a man in the stomach?

A No.

Q Did they ask any of the other two hookers about that?

A No.

Q As far as you know, they didn't ask them?

A I know they didn't ask them at all.

Q Did these men tell you they were asked to sign something?

A They told me they had to sign a paper.

Q In the office of Markey, the superintendent?

A The office of superintendent Markey.

Q Did they tell you they did not know what they signed?

A They did not know what they signed. They were kind of scared. They were under pressure—"If you don't sign that paper we will cut you out of a job and out of the company store."

Q Did they tell these men what kind of a paper it was?

A They didn't tell what kind of a paper it was; white paper is all I know.

Q They said to the men, "If you don't sign this paper you will lose your job and we will cut you out of the company store."

A Yes.

Q All that took place was told you by these men who were in the office with Markey?

A Yes, sir.

Q They told you that?

A They told me that.

Q I believe you were one of the organizers of Beaver Valley Lodge No. 200?

A Yes, I am a charter member.

Q Your name is on that big charter that is in evidence, is it not?

A Yes, sir.

Q Were you an officer at that time?

A Yes, sir.

Q What office did you hold?

A Vice-president.

Q And your name appears with Gerstener and Phillips on that charter?

A Yes, sir.

Q Have you always been active as a union member?

A. Yes, sir.

Q Have you solicited membership publicly and openly?

A Yes, sir.

Q Have you distributed union pamphlets and circulars on the streets of Aliquippa?

A Yes, sir.

Q Have you sold union literature in the streets of Aliquippa?

A Yes, sir.

Q Have you attended union activities such as picnics and things?

A Yes, sir.

Q Did you parade on Labor Day of 1935 with the union?

A Yes, sir.

Q Have you discussed the union and union activity with any of your foremen or any of your bosses since the organization of Beaver Valley Lodge?

A Yes, sir. I discussed it with my big boss, A. L. Lang, one day.

Q Al Lang?

A Yes.

Q When was that?

A 1934, sometime right after we got the charter.

Q What was that discussion?

A He came down to me at my home the first thing in the morning and he say, "Angelo, you ran away from the mill this morning so fast."

I said, "I stayed down there until a quarter of 9:00 and you did not put me to work, so no use of my loafing all day."

He said, "Well, I came up here to see you. I know you are urging a lot of people for a union."

I said, "Maybe I do." And he walked away.

Two days later, the mill was not working that day, he came back in town looking for me. I was off, you see, and he looked for me about two hours and could not find me. After two hours he find me and after he find me he say, "Well, Angelo, Fisher wants to see you at the office." That is Superintendent Fisher, he is superintendent of the seamless and welded tube.

I told him, "I am not going down to the office. I am not getting paid for going down."

So, well, after a long discussion that me and him had together, he said, "You come down and I will pay for the time you will be down there." So, I went down with him.

When I get there I find about six more union men in there and Fisher was telling everybody not to join the union. So, he asked me if I ever joined the union before. I said, "Yes, I belonged to the union before."

He say, "What union you belong to before?"

I say, "Musicians' union, Local No. 82."

He said, "That is a fine idea; you are a good member of the union." Then he said, "At the J. & L. we don't want no union in this town."

Q He said that?

A Fisher said that. "Because the union is no good in this town. This is a company town."

Q You testified at the old Steel Board hearing in November, 1934, did you not?

A Yes.

Q Did you notice any change in your work or your time after you testified at that hearing?

A Yes, sir, I had a lot of change in the work and the time.

Q What was so noticeable? Were you cut down a lot?

A They cut me down on the day work.

Q Were some men who were hired after you as cranemen getting more time than you were getting?

A They was getting more time than I was getting. They was getting ten and eleven days a pay and I was getting six or eight.

Q Did you check that with the timekeepers?

A I checked that right along.

Q What other discrimination did you notice, if any?

A All kinds of discrimination.

Q What?

A J. & L. police officers follow me around the streets day and night.

Q Since the hearing?

A Until today. They do that today too.

Q They followed you today?

A Yes, sir, and also stool pigeons.

Q Stool pigeons follow you?

A Stool pigeons follow me.

Q You just guess they are stool pigeons, don't you?

A I know who they are.

Q What other kind of discrimination do you know about?

A Well, they give me the worse job all the time.

Q Do you notice that you have been watched any more closely than you were before?

A Always watched closer. After the last hearing we have A. L. Lang made a report to Superintendent John Markey every morning at 9:00 a. m. and tell him which crane I was operating so he had a spotter on the floor to watch for me.

Q You have been an employee for a long time down in Aliquippa; what would you say the conditions were between 1915, around when you started, and 1934, generally, at Aliquippa? What were the conditions like as regards union and organization and that sort of thing? Did you observe anything?

A We have better conditions after we get organized.

Q Before that, I mean, did you observe any watchfulness on the part of the company or any policing or anything like that before you got organized?

A No.

Q When the organization began were the people, the employees—freely organized or were they in fear?

A They was free to organize.

Q They organized rather freely?

A Yes.

Q Did they later on become afraid?

A They became afraid on account of the foremen and the police following around.

Q That was between the time you organized and—

A Up to today, I will say, people were being scared about it for their job. That is what they were scared of.

CHAIRMAN MADDEN: Where did you hold your first meeting?

THE WITNESS: The first meeting we had in Ambridge.

CHAIRMAN MADDEN: Why?

THE WITNESS: We could not get no hall in Aliquippa. You can not get no hall on account of the J. & L. They have every hall stopped in Aliquippa. The first meeting was held in Ambridge on 11th Street in an open space lot.

Q (By Mr. Kleeb) Is it not a fact that people in Aliquippa that work for J. & L. were, on the average, fearful of the J. & L. police?

A Yes, sir.

Q Why? What happened that made them so fearful of the company and these police? What do they do?

A They would keep following us and they scare you because they have a gun on them and ammunition in their pocket right along, and the people were kind of scared about it. They said, "They might knock me off sometime like that."

Q Was there a general atmosphere or feeling in Aliquippa that J. & L. was going to keep down every union that ever organized?

A That is it.

Q Did the J. & L. police go around and indirectly tell the people that was their job, to see there was no organizer set up a union?

A Yes, they told me that too.

Q The police did?

A Yes, sir.

Q So you observed, generally, that the people in Aliquippa knew that the J. & L. were going to fight unionism?

A Yes, sir.

Q And for that reason, on account of their jobs, they were afraid to join up?

A They joined before and slackened down a bit on account of the policemen.

Q Would you say most of them wanted to join?

A They were all mostly members for that reason.

Q Do you remember the Employee Representation election in June, 1935?

A Yes, sir.

Q Did you vote at the primaries?

A No, sir.

Q I think the primaries were June 12th?

A June 12th.

Q And the general election was June 19th, a week later?

A Yes.

Q Were you requested to vote at the primaries?

A On the primaries I was requested three times to vote.

Q Who asked you to vote?

A A. L. Lang.

Q Did you refuse?

A I refused three times.

Q What about the general election?

A On the general election they called me in the office in the morning and told me to go ahead and vote, and I said, "I won't."

Q What did he say would hapen if you did not vote?

A They said I would be fired.

Q Was anything said about the Amalgamated?

A Yes. At the time we had a little trouble, it was probably like a family affair. At that time N. R. A. went unconstitutional.

Q Did he say the A. F. of L. could do you no good?

A The A. F. of L. could do no good, they were crooked, they were trying to get money off of you and they could not help you and you should not vote for them.

Q Did you go to the polls?

A I did not go to the polls right then, but I went later on and they called me back in.

Q You thought you better go to the polls?

A The way he put pressure on me, he said, "You big bullhead, you are trying to run this plant but you can not do it. We are running this plant, not you."

Q So you thought it might be wise to go to the polling place?

A I had my wife sick in bed at the time so I had to go to vote.

Q You did not vote?

A No. I did not put any ballot in the box, I just went in.

Q Did Lang come up onto your crane after all that took place?

A Yes that afternon he came to my crane and tried to apologize.

Q For what?

A For sending me over to vote. He said, "Angelo, if you want to make an affidavit outside go ahead and make an affidavit against me, but I was forced to do that."

A Yes.

Q I just want to finish up the picture about your employment since your discharge. Since you have been discharged by the Jones & Laughlin Steel Corporation, have you worked for anybody else?

A I worked for W. P. A. as a foreman.

Q Could you state again in dollars and cents has been your earnings since you were discharged? How much have you earned?

A $90 a month.

Q How many months have you worked?

A From last October, October 15th I get the job.

Q October 15th?

A Up until today.

Q And you were receiving $90 a month?

A $90 a month.

Q I am not certain I asked you this. If I did, we will repeat it: You were averaging how much a week when you were fired? How much were you earning a week?

A You mean at the J & L?

A Yes.

A At the J & L. it was $22 a week when they make me work, when I get full time.

Q Are you married?

A Yes, sir.

Q Any children?

A Four.

MR. KLEEB: That is all.

EXAMINATION BY MR. CARMODY

Q (By Mr. Carmody) Did I understand you to say that before this union business developed at Aliquippa, J. & L. did not have any policemen around?

A They have policemen before too.

Q That is what I thought.

A They always have the Coal & Iron police there.

Q Are there any more policemen now than there were, say, in 1928 or 1929?

A About three times more.

Q About three times more?

A Three times more.

Q Are they more active?

A They are more active.

Q Do they bother the men more than they did in former days?

A Yes, sir.

Q What makes you think that?

A I see it every day. If you don't do things they follow you even on the street and tell you about it.

Q The J. & L. police follow you on the street?

A And tell you about it.

Q Tell you about it? Tell the workers what to do?

A Yes.

Q Oh, they talk to the workmen about their conduct?

A Yes they talk to the workmen about their conduct.

Q Are there town policemen too, in addition to the Steel Company policemen?

Q Separate policemen?

A They got separate police, but they are all run by J. & L.

Q You talked about the company store. Is there just one J. & L. company store?

A Yes.

Q Where is it, in Aliquippa or in Woodlawn?

A In Aliquippa. It is all Aliquippa and it ain't called no more Woodlawn.

Q They don't call it Woodlawn now, just Aliquippa?

A Yes.

Q Just one J. & L. company store?

A Yes.

Q Are there some independent stores there too?

A Yes, sir, there are plenty independent.

Q Some chain stores?

A There are chain stores too.

Q Have you ever talked to any of those business men about union activity?

A Yes, sir.

Q Have they ever talked to you about it?

A Yes, they do.

Q What do they think about it?

A They think the people ought to be organized and get their rights.

Q They do? How many business men are there in town?

A I would say around 600.

Q Six hundred business men?

A Yes, sir.

Q How large is Aliquippa?

A About 30,000 population.

Q Would you say that the majority of those independent business men think the men in the mills ought to have the right to organize?

A Yes, I would say the majority does.

Q Are the clerks in the stores organized?

A The chain stores was against it.

Q The chain stores were against it.

Q The chain stores were against what?

A The people organizing, and also the company store was against the people organizing.

Q Are the clerks in any of the stores organized?

A No.

MR. CARMODY: That is all.

(Witness excused.)

Mr. KLEEB: Mr. Miller?

EDWARD W. MILLER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kleeb) Where do you live, sir?

A McKees Rocks.

Q And are you an International Vice-President of the Amalgamated Association of Iron, Steel, and Tin Workers of North America?

A Yes, sir.

Q And as such, have you been associated with the Beaver Valley Lodge No. 200 with regard to the present controversy, the discharge of these men, at issue?

A Yes, sir.

Q Did you have an occasion to accompany members of Beaver Valley Lodge No. 200 and to visit with it Mr. Harry Saxer, the general superintendent of the Aliquippa works?

A Yes, sir.

Q Do you recall the month and day on which that conference took place?

A It was about the middle of December, 1935.

Q Who was with you?

A There was a committee of the local men, including——I do not know whether I could recall the names.

Q I will give you the names, I think, if it will refresh your recollection—I will not put the committee in. Mr. Ataliah is the present president of the Local?

A Yes, sir.

Q Was any other representative from the International present?

A Vice-President Thomas G. Gillis.

Q Yourself, Mr. Gillis, and Mr. Atallah, and you say three others—

A A committee of three or four more.

Q Who was present from the company?

A Well, I do not know. We were not introduced to anyone except Mr. Saxer, or a name similar to that.

Q Please relate just how this conference was brought about and what tok place, just briefly.

A We went to the office with the committee—

EXAMINATION BY MR. CARMODY

Q (By Mr. Carmody) Let us go back; how was this conference arranged for?

A The local committee.

Q With whom did they arrange it?

A With the company officials, I do not know which individual.

Q So that you were invited there by a local committee?

A Yes, sir.

Q Who had already made arrangements to see the management?

A Yes, sir.

Q All right.

A We went down to the office, and, of course, we stopped there inside the dor. They wanted to know who we were and who we wanted to see. Mr. Atallah gave him the names of all of us, Mr. Gillis and myself, gave our cards, and that gentleman asked us to sit down and wait and he would see.

He returned in a little while and said, "They will see you in a short time."

After a while we were invited up on the next floor, I think it was, we went up some steps, at least. We entered the officer where this Mr. Saxer was sitting behind a desk like you gentlemen are. There was, I believe, two other men on each side.

As we entered the room Mr. Atallah said, "Mr. Saxer, I want to introduce you to our vice-president, Mr. Thomas Gillis.

Mr. Saxer said, "Hello, Tom."

Mr. Atallah says, "This is another vice-president, Mr. Miller."

He says, "Hello, Miller."

Finally he said, "Sit down." We sat down and Mr. Atallah told him of our purpose there, that there were several, I forgot just how many, perhaps a half a dozen, members dicharged that we felt unjustly, and we came over to see if we could not iron these things mutually satisfactorily.

I don't remember whether Saxer asked, but Mr. Atallah went on to relate the names, and Mr. Saxer seemed to know all about every individual case, thoroughly familiar with it, or he said he was. And he said, "Those cases have all been fairly investigated and the men who were discharged for cause", and that was that.

After a while I asked him whether I might ask him a question and he said, "Why shoot."

I said, "Is it customary in cases like this, where you are dealing with your men, that the man has an opportunity or a right to be heard or defend himself?"

He seemed to ignore that question by going on to say that his superintendent or foreman, whoever it might be, make a thorough investigation before any action is taken.

Later on I asked another question after he stressed very strongly that these men were right, that they had thoroughly investigated and all that, and I asked him the question whether it was possible or not for his foremen or superintendents to sometimes make a mistake. He refused to answer that question and passed it back to me, and I said, "Well, inasmuch as it was my question I believe I can answer it", and I answered it by saying that anyone, if they were human, I thought were subject to mistakes.

Mr. Atallah tried to bring up the question of these individual discharges and he said they were all taken care of. He said, "However, if you want to leave a list of those here I will go over them and see what we can do about it", or something along that line, "and let you know."

I think it was Mr. Atallah who sort of pressed for time as to when we might know. "Well," he says, "don't think for a minute that I am going to drop everything I have and run after these fellows." He says, "I have many duties, I have much work, and when I get to it I will take it up", which left us in a quandary whether it would be a week or a month or a year. That is all that hapened there that day. We left.

DIRECT EXAMINATION (Continued)

Q (By Mr. Kleeb) Did you observe or was it your impression tha the issue was a closed one from the attitude of Mr. Saxer?

A Evidently so.

MR. KLEEB: Have you any questions, Mr. Carmody or Mr. Madden?

MR. CARMODY: No.

MR. KLEEB: That is all.

(Witness excused.)

ALBERT ATALLAH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kleeb) Where do you live, Mr. Atallah?

A 130 Grand View Avenue, Aliquippa, Pa.

Q You are president of Beaver Valley Lodge No. 200?

A Yes, sir, I am.

Q And have been a member from the organizations beginning up to date?

A From the beginning.

Q Are you employed now by J. & L.?

A As far as I know. I have been on the sick list since the last part of September. I had an attack of pneumonia and pleurisy and I had an operation on my throat.

Q Since 1935, in September?

A Since the 25th day of September. I took sick in the mill and I was sent home from the mill.

Q You do not know whether you have got a job or not?

A As far as I know, I am still on the sick list. When I go back I will find out.

Q You have not been back to see since?

A No.

Q The last two days we have been discussing here and it has been testified to about these men being discharged periodically from the latter part of July up to date. The last discharge we have recorded in our controversy was January 16, 1936. Do you know, have there been any active union men discharged since that time?

A Yes, four or five more.

Q Have they all been active men, the most active in your ranks?

A Most of them are those who are not active. It is merely union, that they belong to the organization.

Q Would you state, please, what affect, if any, this staggering discharge of union men, these men who have testified, what affect that has had noticably upon your organization?

A Well, to be honest with you the affect in the entire membership is that all of them have got that fear of being fired or discharged from their jobs because they say that all the active members are being fired so

far, and I have been informed from many members of the organization that they have been told in the mills, inside and outside the mills, to keep away from the union, not to pay dues, if they expect to keep their job much longer.

In fact, at our mass meetings until the present time you will always find two or three plain clothes men of the city in plain clothes, who, come to find out, send reports and we find out from certain sources that they were forced by Captain Mauk to be there to take the information. We happen to know all the stool pigeons and the company police, we happen to know them all, and when one of them goes there we know him right away.

Q Has the attendance at your meetings fallen off since July, 1935?

A Rapidly.

Q Very much?

A Yes, sir.

Q And there is constant discussion for fear, and so forth, among the men about their jobs and being afraid of losing them?

A All the time.

Q As counsel for the Board, I had occasion to request your assistance to get witnesses who knew something about the history of these men and their employment, and so forth, did I not?

A Yes, sir.

Q And did you endeavor to get some witnesses and talk with men about these cases, union men?

A I did.

Q Of course they were men who were not known to be union men?

A Yes, sir.

Q What was the reaction of all these employees that you talked with about coming in and testifying?

A They were afraid. They were scared to show up.

Q Did they say why?

A Thep were afraid to get fired; they were afraid the minute they came here to testify, the next day they will have no job. In fact, they came out openly and told me so.

Q Mr. Atallah, generally, what has caused this fear, this general fear, that seems to exist throughout all the employees? What do you attribute it all to?

A The general fear is this: Aliquippa seems to be a funny town; it is controlled politically and the work is controlled by the Jones & Laughlin Steel Corporation. In fact, the police force is hired and fired by the Jones & Laughlin in Beaver County, we all know that from year to year. We know that for so many years the bank is controlled by J. & L., the busses, the street cars, even the real estate. I can relate some instances where some real estates refused to rent us a hall after they were ready to make a contract with us or a lease and two days later they refused to rent us the hall because they said they got orders not to do so.

Q Is the very water you drink owned by the Jones & Laughlin?

A The water in more than half the houses in which the employees live, and it has been known from time to time that if anybody will mention a union or a labor organization of any sort he will not live there until next morning.

Q That is the way it was?

A That is the way it was from the beginning, even if anybody would mention politics—if anybody mentioned a Democrat five years ago he would not live in Aliquippa two days.

Q Was that condition slowly broken down a little bit?

A Slowly broken after the organization started, after the Beaver Valley started open there. They came out openly after October 14, 1934 and the employees began to get strong, come out in the open, and they

not in fear very much. Then after the N. R. A. was unconstitutional they started renewing the attack on the employees and especially on the members of the Beaver Valley Lodge of the organization.

Q They did this up until the time the State police came in? I think it was testified before they did that, and after the Steel Board hearing back in October, 1934, there was a sort of let-down of this pressure and intimidation?

A A little bit.

Q Then N. R. A. was declared unconstitutional in May, 1935, and right away the thing started to bear down again?

A Yes.

Q Did you notice that definitely and particularly?

A Absolutely; right away I noticed it, within two days after that.

Q Is that the condition that has been going on since that time?

A The condition has been going on since. If you will permit me to say this, during the election, that is, the county election—

Q The county election in November?

A The county election in November.

Q 1935?

A Yes, sir. — they kind of started to pat the men on the back for a few days; if they know anybody can bring in ten or fifteen votes they will go in and pat him on the back and talk to him friendly in order to bring in a few votes, but soon after they will start in again after them.

Q Do you think today the people in Aliquippa have about the same fear of Jones & Laughlin regarding unionism that they did in 1933?

A I would dare say more.

Q More?

A Yes.

Q And the firing of these active men—I assume

they are active—you have heard them all testify, haven't you? These men who have been discharged?

A Most of them are the organizers.

Q And each of them is sort of picked from various departments in the plant, isn't that right?

A Yes, sir.

Q And they are the most active men?

A Yes, sir.

Q And you say you have noticed a marked effect of those discharged upon the rest of your union members?

A That is true.

MR. KLEEB: That is all. Have you any questions?

MR. CARMODY: I have one I want to ask him.

EXAMINATION BY MR. CARMODY

Q (By Mr. Carmody) What did you do in the mill when you worked there?

A I worked in the hot mill. I turned screws. I had two or three different jobs in there.

Q When did you go to work there?

A In Septmber of 1923.

Q 1923?

A Yes, sir.

Q Had you worked in a steel mill before that?

A. I worked in Cambridge, Ohio, for the American Sheet & Tin Plate Company; that i sa United States Steel subsidiary.

Q. Had you worked steadily at Aliquippa from 1923 until September, 1935, when you were taken ill?

A. Yes, sir, with the exception of a couple of months in 1927 when I was sick. Of course, I was off a few days in there, on account of slack work.

Q. What would happen at Aliquippa if all the employees should join the union over night and announce that they were in the union?

A. At least they will have peace and they will have their full rights. Probably the company would recognize them. Otherwise I do not think the company would give in so easily. The company would put up a strong fight.

Q. You do not think they would shut the plant down and move everybody out and bring in nine thousand from the South Side or some place to take their place?

A. The company can, but I doubt whether they would or not.

Q. You do not think it is so easy to start again to—

A. It is not easy.

Q. —rebuild an organization of that kind?

A. That is true.

Q. When men have worked together in a mill of that size or in a group of mills like that over a long period of years, they get to know a great deal about the machinery and a great deal about the lay-out and a great deal about the kind of steel that is required, and so on, and so forth, do they not?

A. Some of them.

Q. As a organization all of them together constitute a great asset, do they not, to any company?

A. Some of them.

Q. Now, I mean, if you take the sum and total of the skills of all the men who are working in the plant from the time the ore is unloaded, through the blast furnaces and the open hearth and the soaking pit, and even down to the electricians who have to have special skill, and the water service men, and so on, and so forth, you would say that constitutes a large asset, would you not?

A. Yes, sir.

Q. I did not find that set up in the statement of the company as an asset but I suspect they too would recognize it as such, as they would the skill of their

superintendents, and so forth, and so forth. So that you feel that if all the people in that plant should suddenly withdraw from this enslavement that you think they are in and free themselves by organizing into some sort of cooperative organization, the company would probably deal with them then on a different basis?

A. Thep will be forced to deal with them, naturally.

Q. You don't think they would start discharging the leaders like you pick off people with a rifle, you know, in a war, trying to pick off the leaders and drop them down? You don't think that would happen if they were fully organized?

A. If they were fully organized that would not happen.

Q. What are the chances of a complete organization of that establishment at this time?

A. What is the chances?

Q. Yes.

A. There is a great chance. The feeling and the sentiment is there. You can ask the average man his feelings towards organization and he will come out openly and tell you, "I am for it and I am willing; I will do anything to belong to an outside organization but I must have protection of some kind because if I come out in the open, now, my job is done."

The fear has got in over there and they fear the loss of their jobs.

At the beginning of the organization, at the beginning of 1935, we had in the neighborhood and more members signed up, 6,238 members signed up, that is, signed pledge cards.

At the beginning of 1935 they began to show up a lot of them began to show up and come to the front. You can tell right there that if the company did not fear those men and the strength of the organization they would discharge the leaders right there, but the

organization was strong then and the N.R.A. was in power at the time and they feared the power of the organization, because they thought with six thousand and more men they might pull a strike, and once they pull a strike they will shut the plant, and many men over there who are in sympathy with the outside organization, but because they have good jobs and make good money they will not come out in the open, if they are forced to do so and see the big majority is for it they will come out in the open and naturally the company will take no chances of firing anybody.

Q. I notice there are no rollers and heaters in this complaint. Do you have some heaters and rollers?

A. There are a few of them, except the old ones who expect to get some pensions, the old timers. There are a few of them still alive and they are afraid.

Q. So you did have 6,000 applications at one time?

A. 6,238 signed pledge cards. After June 19, 1935, after the Employee Representation election in the mill, we sought to have a test and call a sort of an outside election ourselves, right in our headquarters. We called an election over there, and, of course, I put out hand-bills and I put it in the newspaper, that we were going to have an outside election.

The return showed that 5,000 and some came in over there and voted for the outside union; five thousand and some voted for the outside union and seventeen for the inside.

Among the seventeen I am positive that one of the newspaper reporters—with all respect to the newspaper reporters around here—that reporter over there, who is reporting for the Aliquippa Gazette—we call it the "Scandalizer" over there; that is controlled by J. & L.—a fellow by the name of Ryder who is the reporter there, he went inside and said, "I am going to vote," and he voted for the company union and put it in the ballot.

Q. You cannot be sure how people vote when they have the right to cast a secret ballot? You could not say anyone voted one way or the other.

A He put it right there.

Q Now, during your time there has there ever been an election in the mill to determine whether the employees wanted the Employees Representation Plan that was established by the company or an outside union?

A No, sir.

Q There has never been such an election?

A No, sir.

Q But at the election that you held, after the Employee Representation Plan election of last June, the one you held in your headquarters, more than five thousand voted, and all but seventeen of them voted for an outside organization?

A Yes, sir.

Q That, of course, was an unofficial election, and that had no connection with J. & L.?

A Unofficial.

Q One more question: Would you say that if the present statute under which we operate, the National Labor Relations Act, were declared constitutional by the Supreme Court and established as the law of the land, that an election at J. & L. would result in a victory for an outside or an independent organization over an inside or employee representation plan?

A A big majority, I have no doubt in mind, that is, provided the election is held outside of the company property.

Q Now, having in mind the fact that there have been disturbances in the community for the past two or three years, disturbances that led to sending the State police in there at one time, having that in mind, would you say such an election would clear the atmosphere and make a more peaceful community and better relationships in the mill?

A Yes, sir, much more.

MR. CARMODY: That is all.

MR. KLEEB: That is all.

(Witness excused.

JOHN S. MAYER, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kleeb) Where do you live?

A Bentleyville, Pennsylvania.

Q Were you connected with the Amalgamated Association of Iron, Steel, and Tin Workers?

A In 1933.

Q What were you?

A In the month of August?

Q What were you?

A Organizer.

Q An organizer?

A Yes.

Q Were you in Aliquippa at the Jones & Laughlin Steel Corporation for the purpose of organizing in August, 1934?

A 1933.

Q 1933? Will you give the Board the background of this case? Tell us what happened.

A With you permission, may I read that from the paper?

CHAIRMAN MADDEN: Yes, go ahead.

THE WITNESS: That will save time.

August 22, 1933, I was sent to Aliquippa by the Amalgamated Union. We find the place but we could hardly get there because every place was pretty near closed to any organizer or to any stranger in the town of Aliquippa.

On the 23rd I looked around the town and talked with some people, with some working men.

On the 24th of August we took a bundle of pamphlets and news from the American Federation of Labor and went to the railroad station corner and the railroad bridge with our organizer. We was approached there by different fellows who left the plant at that time and gave them the pamphlets.

The Chief of Police of Aliquippa came to me and told me to move up the sidewalk, which I did, and he stated, "Why don't they send a young man to do this distributing in here?"

I asked him why, and he said, "Well, you are not fast enough to run because you are too old", and he left laughing.

Several men from Jones & Laughlin Corporation approached me and asked me about the white collar men, what we are going to do, did we intend to hold any meeting in Aliquippa. I said, "Yes."

One particularly said, "Well, how are you going to hold any meeting here in this town? This town is owned by the Jones & Laughlin Corporation. They don't want any union. They have their own company union."

I noticed right away that he was some official man when he tried to explain to me that they don't want any outside union over there, and he stated that he had some meeting in the chemical department, his department, and he asked his men over there and all the men have been satisfied with the company union and they said to him that they do not want any outside union.

On the same day, on the 24th of August, about 9:00 o'clock I left my boarding house to meet some working men down town to talk something over about the union. After a couple of hours I left for home at five minutes to eleven. Walking on the sidewalks, on Franklin Street, if I remember right, there was two or three men standing in a bunch and when I approached them they was talking amongst themselves. As I approached them they asked me, "Hey, give me a cigarette."

I said, "I don't smoke." I started to go faster and they stepped behind me and followed me fast too. When I passed my lodging house, just about the next house, then I turned back and as soon as I turned back they said, "Here is the guy who tried to organize a union in Aliquippa." They hit me on the head and I jumped over a natural fence, they followed me to the porch, and beat me upon the porch.

I cried for help, I ran back of a screen door, and the other door was locked. I tried to hide myself, and they grabbed me and pulled me out on the porch back again.

EXAMINATION BY MR. CARMODY

Q (By Mr. Carmody) How old were you then, at the time of that attack?

A 52.

Q Were they younger men than you?

A Oh, yes, about 23, or 24 or 25.

Q How many of them?

A Two.

Q All right.

A There was more men standing on the sidewalk and one came with the policeman and they say, "Stop; that is enough."

They took me in a car and they took me to the police station. They searched me there of all papers and what little change I have in my pocket and when I asked for an explanation the same man who beat me up and some other fellows there, they asked me, "How do you like Aliquippa now? How do you like to organize Aliquippa men in a union here?" And they laughed.

They put me in the jail and I was there about three-quarters of an hour, and after that they took me out and asked $5 deposit, the policeman, I do not know who he was. I said, "I don't have any money," and they gave me the papers and the Chief said, "Go home."

I refused to go because I said if I go out maybe I be killed. He sent one officer with me who advised me to leave the town, when he took me down to the lodging house.

That was Thursday, or something like that, and on a Monday morning we had a hearing before Justice of the Peace Kane. I had an attorney but there was no hearing, we did not have no hearing over there. The Justice said, "Have you any money?"

I said, "I don't have any."

He said, "I need to put you in jail."

I said, "Do as you please." Then my friend Dobbins asked the Justice of the Peace to give me time to bring the money and we bring the money the next morning to the Squire's office.

There was about ten plain men in an alley and one bumped into me but I did not say anything. After I paid the $5 I asked for a transcript. He said he could not do it. I said, "Why did you take the $5?"

He said he could not do any other way, if he would let me go free he would lose his job as a squire. He said, "Go to court in Beaver Falls, see the district attorney and get him to give you a permit that I have the right to issue the transcript."

I said, "That is very funny to me," because I know that you can take an appeal from the Squire's decision.

"No," he said, "we have different rules in Beaver County."

So, I went to Beaver Falls, me and my friend Dobbins, and talked to the Assistant Attorney, and he said, "Mr. Mayer, I am very sorry but you need to file a petition to the judge, and if the judge grants you a permit you can apply for a transcript, but you need $50 for expenses and then he will decide whether you have the right to get the transcript from the Squire of Aliquippa." That was all that happened.

Then we went back to Aliquippa and we was followed by I don't know how many men. We slept there

overnight because we could not go that day home. There was about three cars parked alongside the curb and I know they was company cars because I sent the numbers in to Harrisburg and we got the names.

DIRECT EXAMINATION (Continued)

Q (By Mr. Kleeb) You mean the cars following you?

A Yes, following me everywhere.

Q Is that the only time that you were beat up, that one time?

A That is the only time over there.

Q How long after that happened did you go back to Aliquippa? Was it two days or three days later or a month later?

A No, three or four days later.

Q All of your time in Aliquippa took place in August of 1933?

A Yes.

Q You were not very successful in organizing, were you?

A We was not because we could not hardly get out of our lodging house. We were besieged day and night.

Q Because you were threatened and besieged and everything you feared for your life?

A Absolutely.

Q And because of your fear for your life you thought you better get out of that town?

A We was told to get out.

Q Yes, you were told to get out, and, rather than take a chance on getting hurt or injured, you did get out, is that right?

A Yes, sir.

Q Mr. Mayer, did you report what happened back to the office of the Amalgamated?

A Yes, I did.

Q And what did they do? What did they decide?

A They sent me to hire an attorney in Pittsburgh and sent this attorney on for a hearing in Aliquippa.

Q I mean, after that did the Amalgamated say anything about sending another man down to Aliquippa, whether they wanted to or whether they were afraid to send another man down?

A They did.

Q Did they say anything to you about being afraid if they sent anybody else down he might lose his life?

A They said, yes.

Q That was because—

A On account I was beaten very badly. I was eight days I could not hardly see out of my eyes.

MR. KLEEB: Any questions?

EXAMINATION BY MR. CARMODY

Q (By Mr. Carmody) What do you think the company counsel would say with all that testimony, if the company were represented here by counsel or other witnesses? Do you think they could bring any witnesses that would deny all that you have said?

A I talked to an ex-counsel man in Aliquippa and he told me that Aliquippa is owned by the Jones & Laughlin Corporation, and he as a counsel man was told to keep his mouth shut, otherwise he would be run out of town.

Q My question really was, whether, if the company were here with its witnesses and its lawyers, could they disprove what you have said about this?

A They could not do it because that is the truth. Everybody seen I was beat up with two big husky fellows.

Q People saw that on Sunday morning?

A They seen it. They seen it that night. There was a bunch on the sidewalk watching but they were scared to help.

MR. KLEEB: Some young fellow came to help you?

THE WITNESS: He tried; he said, "Stop; that is enough." I don't know whether he just simply said so —he was a stranger.

MR. KLEEB: That is all, Mr. Mayer, thank you.

(Witness excused.)

MR. KLEEB: I would like before closing to call the attention of the Board to the fact that this same witness also testified before the Steel Board involving the same company and the same union in the November hearing, 1934, at which time his testimony was more or less just along the same lines.

The completes the case.

CHAIRMAN MADDEN: This hearing will probably be reopened at Washington at sometime in the near future, largely for the purpose of receiving some documentary and statistical evidence which can be received there. Counsel for the union will be notified and if they care to attend they may, but for now the hearing is adjourned.

(Whereupon, at 4:50 o'clock p. m., the hearing was adjourned subject to the call of the Board.)

CERTIFICATE

This is to certify that the attached proceedings before the NATIONAL LABOR RELATIONS BOARD in the matter of:

CASE NO. C-57

NAME Jones & Laughlin Steel Corporation, and Amalgamated Association of Iron, Steel & Tin Workers of North America, Beaver Valley Lodge No. 200.

PLACE Pittsburgh, Pa.

DATE March 14, 1936

were had as therein appears, and that this is the original transcript thereof for the files of the Board.

Smith & Hulse
(Official Reporters)

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the Matter of:
Jones & Laughlin Steel Corporation

and

Amalgamated Association of Iron, Steel & Tin Workers of North America, Beaver Valley Lodge No. 200.

No. C-57

Court Room No. 1032 Post Office Bldg., Pittsburgh, Pennsylvania, Saturday, March 14, 1936.

BEFORE:

J. WARREN MADDEN, Chairman, National Labor Relations Board.

APPEARANCES:

ROBERT H. KLEEB, Regional Attorney, appearing for the National Labor Relations Board.

PROCEEDINGS (Resumed)

CHAIRMAN MADDEN: Mr. Reporter, will you note for the record that the only appearance this morning that Mr. Kleeb, Regional Attorney, representing the National Labor Relations Board.

Mr. Golden, will you stand up and be sworn, please?

CLINTON S. GOLDEN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

CHAIRMAN MADDEN: Mr. Golden, will you make a statement for the record as to your communication with Mr. Schullman, counsel for the Beaver Valley Lodge No. 200, Amalgamated Association of Iron, Steel & Tin Workers.

THE WITNESS: On receiving notice from Wash-

ington that the hearing in this matter was scheduled for 10 a. m. today, I communicated with Alexander Schullman, of the law firm of Schullman & Harter, counsel for Lodge No. 200, Amalgamated Association of Iron, Steel and Tin Workers, and advised him of the hearing, and asked him if he would be present. He advised that because of pressure of other work he did not see that it would be possible for him to be present here today.

CHAIRMAN MADDEN: Very well.

(Witness excused).

MR. KLEEB: Mr. Trial Examiner, as this is a reopened hearing of the case involving the Jones & Laughlin Steel Corporation and the Amalgamated Association of Iron, Steel & Tin Workers of North America, Beaver Valley Lodge No. 200, I should like at this time to offer in evidence, as Board's Exhibit No. 60, a copy of the notice of further hearing and a certified copy of the order appointing J. Warren Madden to act as Trial Examiner in this hearing.

CHAIRMAN MADDEN: That may be admitted.

(The documents referred to were thereupon received in evidence and marked "Board's Exhibit No. 60.")

MR. KLEEB: Mr. Stoughton, will you please stand and be sworn?

CHAIRMAN MADDEN: Is this other gentleman to be a witness?

MR. KLEEB: I do not believe so; no.

EDWARD E. STOUGHTON, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION

Q (By Mr. Kleeb) Will you give your full name to the reporter, Mr. Stoughton.

A Edward E. Stoughton.

Q Where do you live?

A 611 Southern Avenue, Mt. Washington, Pittsburgh, Pennsylvania.

Q And you are employed where?

A In the Trunk Line Freight Inspection Bureau.

Q Where is that located?

A Union Station, Pittsburgh, Pennsylvania.

Q What is the nature of your work with that Bureau?

A The Bureau renders various services to a number of lines that are members of the Bureau, such as milling in transit, merchandise inspection, egg inspection, weight agreements, and claims. That is how the services are classified.

Q Are you assistant manager of that Bureau?

A I am chief clerk, Pittsburgh District, Trunk Line Freight Inspection Bureau.

Q So that we can get a picture of th eoperation of this Bureau, will you please state where the central office of the Trunk Line Freight Inspection Bureau is located?

A Maybe I had better give the name of the manager here. Mr. W. J. Edwards is manager of the Trunk Line Freight Inspection Bureau and he is located at 143 Liberty Street, New York.

Q Is the country divided up into various kinds of such bureaus?

A Yes, sir.

Q Will you please state what they are?

A Well, there is the Central Freight Association—

Q Is that known as the Central Inspection & Weighing Bureau?

A Yes; that is the Bureau of the Central Freight

Association. The classification of the country is—I think I had better give that first—Central Freight Association, Trunk Line Freight Association, New England Freight Association, then the Southern Freight Association.

Q Is there a Western?

A Yes, sir; there is the Western Trunk Line Freight Association and Southwestern Freight Association; also Transcontinental Freight Association.

Q Do you know whether there is a Canadian Freight Association?

A Yes, sir.

Q Now, are these various associations the central agency over the various Bureaus?

A Yes. There is generally a Bureau operated by these associations.

Q Are their Bureaus located in various parts of the United States and in Canada?

A Yes, sir.

Q There is a Trunk Line Freight Inspection Bureau at New York, is there?

A Yes, sir.

Q That is the one under which you operate?

A Yes, sir.

Q And is there a Southern Weighing & Inspection Bureau in Atlanta, Georgia?

A Yes, sir.

Q A Central Inspection & Weighing Bureau in Chicago, Illinois?

A Yes, sir.

Q A Western Weighing & Inspection Bureau in Chicago, Illinois?

Q A Transcontinental Freight Bureau in Seattle, Washington, and in San Francisco, California?

A Yes, sir.

Q And the Canadian Freight Association in Montreal, Canada?

A Yes, sir.

Q How many sub-divisions does the Trunk Line Freight Inspection Bureau have, and where are they?

A Well, I can name them—New York District, Albany District, Philadelphia and Pittsburgh.

Q There are, therefore, five bureaus under the Trunk Line Freight Association?

A Yes, sir. That is, only one bureau, but those are districts.

Q I see; five districts under the one Trunk Line Freight Inspection Bureau?

A Yes.

Q Which is one of many bureaus throughout the United States?

A Yes, sir.

Q Now, is your Pittsburgh Bureau, or District, rather, confined to a certain area?

A Yes, sir.

Q And you service a number of railroads?

A Yes, sir.

Q The trunk lines of a number of railroads?

A Yes, sir.

Q Will you please state what railroads you act as agents for?

A The New York Central, Pennsylvania Railroad, Baltimore & Ohio, Pittsburgh & Lake Erie, Pittsburgh, Chartier & Youghiogheny, Wheeling & Lake Erie, Monongahela Railroad, and the Western Maryland.

Q (By Chairman Madden) Is there not a Pittsburgh & West Virginia Railroad?

A They are not a member line of the Bureau.

Q (By Mr. Kleeb) It is correct, then, to state that in the carrying out of your operations, you act more or less as an agent for the various trunk lines of the railroads you have mentioned?

A The carriers; yes, sir.

Q That is, carriers?

A Yes, sir.

Q And what is it that controls the operation of

your Bureau; that is, what are the rules and regulations under which you operate?

A Well—

Q I will put it this way: Do you operate under what is known as a transit tariff of the various railroads?

A Yes; we render various services to member lines of the Bureau.

Q Does one of those services consist of policing the companies which use the various carriers?

A Yes, sir.

Q And do you also install records for shippers over these carriers, by which shippers claim a certain rate privilege over the line?

A Yes, sir.

Q Are you familiar with what is known as a transit tariff or the transit tariffs of railroads?

A Yes, sir.

Q Will you please explain what a transit tariff is, as you understand it?

A The transit tariff provides rules and regulations in connection with the stopping in transit of iron and steel for the purpose of fabricating and reshipping to final destination.

Q Is it only for the fabrication of iron and steel?

A There are various privileges, such the milling of weight in transit, storage—

Q (By Chairman Madden) That would be the grinding of it into flour?

A Flour and other by-products.

Q Or other feeds of different sorts?

A Yes.

Q (By Mr. Kleeb) State a few of the other things?

A Storage of apples in transit, storage of eggs, storage of sugar in transit.

Q Does that apply to cutting and creosoting lumber?

A Yes, sir.

Q And drying lumber?

A Yes; the storage of lumber and the milling or dressing, sawing, etc.

Q Will you go a little more thoroughly into the fabricating of iron and steel?

CHAIRMAN MADDEN: May I interrupt there?

MR. KLEEB: Yes, sir.

Q (By Chairman Madden) Can you tell us where a complete statement of the different processes to which this privilege is applicable is available?

A Well, the Pennsylvania Railroad tariff, I. C. C. No. 100, Pennsylvania Railroad No. 200, provides the rules and regulations. Now, each carrier publishes its own transit tariffs, containing these rules.

Q Are the tariffs published by the other railroads essentially different from the Pennsylvania Railroad tariff?

A They are practically uniform.

Q These tariffs must be filed with and approved by the Interstate Commerce Commission?

A Yes, sir.

Q (By Mr. Kleeb) You mentioned Pennsylvania Railroad Transit tariff No. 200.

A Yes, sir.

Q Would you say from your observation that that tariff is a compilation of practically all of the shipments that are entitled to the privilege in transit?

A That is covering the Pennsylvania Lines. There may be other privileges not mentioned in that tariff, published by other carriers, but the Pennsylvania Railroad tariff covers practically them all.

Q Are you familiar with the things that can be done to iron and steel, that you call fabrication, which would not affect the right to have this transit privilege, or rather, what do you mean by fabricating in transit?

A The stopping of iron and steel at a transit point for the purpose—now, I can't recall all of the processes that it goes through, but I can name some of them.

CHAIRMAN MADDEN: Do you have any memo-

randum of that from which you can refresh your recollection?

Q (By Mr. Kleeb) To assist you Mr. Stoughton, in stating what is done in this fabrication process, I show you a rather loose volume and ask you if that is the Pennsylvania tariff No. 200, I. C. C. Tariff No. 100?

A Yes sir; that is a copy of our tariff.

Q You are familiar with it, so as to refresh your recollection in testifying as to what is done in the process of fabrication which is entitled to the privilege. Will you turn to the iron section, if you can find it, and tell us what can be done?

A Yes. What is that question now?

CHAIRMAN MADDEN: You had better put a new question to the witness.

MR. KLEEB: Yes.

Q (By Mr. Kleeb) Have you found the section?

A Yes, sir.

Q Applicable to the fabrication of iron and steel?

A Yes.

Q With that to refresh your memory, will you please state what a fabricator may do with iron and steel when they are entitled to the transit privilege.

A There are various processes, such as bending, bolting, boring, burning, countersinking, cutting, drilling, flanging, gagging, painting, planing, punching, reaming, riveting, sawing, shearing, straightening, tapping, threading, welding.

Now, there is one thing there—well, I guess that covers it.

Q Will you please tell us the iron and steel products which may be so processed or treated as you have above mentioned?

A The following iron and steel articles as from the mills:

Angles, bars, beams, bolts, castings, channels, columns, ells girders, masts, nuts, plates, rivets, rods, tees, trusses, washers, and Zees.

Now, the castings are restricted, and the privilege is only applicable when shipped in the rough, not fitted, painted, japanned, bronzed, coppered, acid coppered, plated, tinned, or galvanized.

Q (By Chairman Madden) Please tell me what that means? Shipped from where in the rough?

A From the rolling mills.

Q Do you mean the rolling mill as the transit point?

A No, the rolling mill—that is, the inbound material consisting of the numerous articles that I mentioned there—

Q Do you mean if they came from the point of origin in anything other than a rough casting, then you would not get the transit privilege on them?

A No; on the castings there is a specific note there that restricts the castings, but they do not restrict the other articles.

Q I understand that, but as to the castings, but if the mill in which they were rolled, painted or japanned, or on which they did any of these other things to them—

A They would not be entitled to the transit privilege.

Q Even though at the transit point they were drilled or reamed, or what not?

A Yes. They must be in the rough. The castings are not rolled. They are cast.

Q Yes; I understand they are cast. Do you understand why that rule happened to be made that way?

A In the erection of bridges, they use a base plate for the girders and piers that are cast and rough machined. That is about the only casting that is used under the fabrication. It is what is known as a bearing plate for bridges.

Q (By Mr. Kleeb) So that we might have a correct picture in the record of this operation, let us show how this transit tariff, along with the privilege allowed thereunder, operates. Is it true that the person doing the fab-

ricating, as illustrated by you in your testimony previously, claims a privilege of some sort under this tariff? Is that correct?

A Yes, sir.

Q Now, will you please state in your own way what privilege he claims, in what way he does it, and how it operates?

A Well, under the transit tariff, he must make application for this privilege and agree to abide by the rules, as provided in the tariff.

Q And what is that privilege?

A The fabricator is entitled to a refund in the charges, or in other words, the material as from the mill shipped to a transit point is charged at the local rate, and after fabrication and being reshipped, it is also charged at the local rate, and the fabricator is entitled to claim the difference betwen the sum of the two locals and the through rate from the original point of shipment to final destination.

Q Of the fabricated product?

A Of the fabricated product.

Q So that if a company is engaged in fabricating, as set out in the transit tariff, and purchases the iron and steel from one company and then fabricates it within the regulations of the tariff, and ships to a customer, he is entitled to this transit privilege?

A Yes, sir.

Q So long as, of course, he is within the tariff?

A Yes, sir.

Q And the privilege is a saving of some money?

A Yes, sir.

Q And that money saved is, as you stated, the difference between what it would have cost to ship from point of origin to the fabricator and then adding to that the cost of shipping from the fabricator to his consignee, and what the cost would have been from the point of origin to that ultimate consignee?

A Yes, sir.

Q The difference between those two would be the savings?

A Yes, sir.

Q Is there any charge for this privilege?

A There is a transit charge of three cents a hundred pounds in addition to the through rate.

Q Now, in my future questioning, I will call the point of origin the shipper and the person entitled to the privilege as the fabricator, and the place where he does the fabricating process as the point of destination.

A Yes, sir.

Q Assuming now that a fabricator thinks he is entitled to get this privilege, how does he go about to do it?

A Well there are two methods in force at the present time. One of them is station settlement, whereby the carrier prorates the shipment. The other method is by claim, which must be filed on a monthly basis.

Q Now, what does the fabricator do? Does he ask for this privilege or how does he go about getting it?

A He may make application as provided for in the transit tariff—

Q To whom does he apply?

A To the officials of the carriers, generally a division freight agent, or at times the general freight agent.

Q That is in the form of an informal letter, perhaps?

A Yes, sir.

Q Then, is your Bureau informed that this fabricator has applied for the privilege?

A Yes, sir.

Q What do you do?

A We conduct an investigation to ascertain whether they are in a position to comply with the requirements and also as to the materials to be fabricated and what process they go through.

Q And if you come to the conclusion that they are entitled to the privilege under the transit tariff of the

particular carrier involved, do you install records of some sort?

A Yes, sir.

Q And where are they installed?

A At the plants—generally at the plants. In some cases, the traffic departments of the fabricators demand all the records themselves.

Q What do you call this person entitled to the privilege?

A A fabricator.

Q Is he also called a transit operator?

A Well, yes. The general term is "transit operator."

Q Now are there certain transit points in this set-up?

A Yes, sir.

Q How are they determined and what are they?

A They are provided for in the tariff.

Q Are they determined by the locality at a particular time as a transit point?

A No; it is determined by the plant location.

Q Explain that, if you will, more fully, please.

A We will say there was a new fabricating plant erected. That fabricator or transit operator would have to come along to the interested carrier for the establishment of that point in the tariff. Otherwise, he would not be entitled to the transit privilege.

Q (By Chairman Madden) Suppose there was another plant, another similar plant at that point, that is, the town had been established as the transit point because of that other plant. Then the new one could come in on it, could it not, without any new tariff being filed?

A Yes, sir.

Q It would simply have to make application?

A Yes, sir.

Q To get the privilege?

A Yes, sir.

Q (By Mr. Kleeb) Is there a monthly record kept

by your Bureau of the shipments by these transit operators?

A The transit operator keeps a tonnage record and furnishes our Bureau with copies of that record, and the settlement is made by claim. He also attaches a copy of the report to that claim.

Q Is it a fair statement to say that every time a transit operator claims this privilege that you have described, he files a claim with the Bureau?

A Not directly with the Bureau, but with the freight claim agent or auditor of the carrier, who, in turn, refers it to our office for investigation and advice as to the merits of the claim.

Q That is done in every case?

A Yes, sir.

Q In other words, the transit operator cannot claim this privilege until it is passed upon by this Bureau?

A Yes, sir.

Q And it is referred to the Bureau by the railroad to which the claim had been presented by the transit operator?

A Yes, sir.

Q You mentioned awhile ago that one of your duties was policing. Explain that, please, just briefly.

A Well, that is a term used in connection with the Bureau. It means when we receive one of these fabrication claims, we must check the reports as furnished by the transit operator and his statements, as well as to cancel the tonnage on the backs of the inbound freight bills in order that the transit operator will not duplicate his claim at any time, and to deprive him of so much billing.

Q (By Chairman Madden) So that he cannot use it again?

A Yes; so that he cannot use it again.

Q In other words, this is a record of so much goods which come in, and which have gone out?

A Yes.

Q And therefore are not available to use again?

A And we also conduct an investigation, checking generally the contracts covering the fabricated material. That is for the purpose of determining whether the materials claimed on is entitled to the transit privilege.

Q Do you mean that if anything was worked into the fabrication which was not entitled to the transit privilege, that then none of it would get it?

A No. Certain articles—suppose there was a completed article, that that article was finished and there was no further work required on it. It would not be entitled to transit privilege, or they may sometimes have machinery among a shipment which would not be entitled to the privilege. As times the transit operators also ship with fabricated material contractors outfits. They may be poles, pipes or something that a contractor would use. That would not be entitled to the privilege. For that reason, we make a careful check of all the records.

Q (By Mr. Kleeb) Your main idea, then, in all of this policing is to see that if the railroads are going to give this rebate on the freight rate, they are giving it to the proper people?

A Yes, sir.

Q And that what they have shipped is entitled to the privilege?

A Yes. I might add—to see that the rules are carried out.

Q That is, the rules of these transit tariffs?

A Yes, sir.

Q Is this operation confined to carload shipments, or does it apply to less than carload shipments?

A Carload shipments only.

Q Are the shippers to the transit operator and the receivers of the goods from the transit operator familiar with and acquainted with the fact that the fabricator or transit operator is using or availing himself of this privilege?

A Yes, sir.

Q How do they know about it?

A Well, in bidding for the job or the material, or anything like that, that freight rates enter into, the shipper and fabricator and the receiver are all familiar with the transit privileges.

Q But the fabricator is the only one who agrees to comply with all of the rules and regulations?

A Yes, sir.

Q And he also agrees to keep records?

A Yes, sir.

Q And he agrees to make statements, when requested, as to the tonnage of the freight on hand?

A Yes, sir.

Q That is, the freight which would be entitled to the transit privilege?

A Yes, sir.

Q Is he required to make an affidavit, when requested, as to the accuracy of this tonnage?

A He certifies that freight bills attached to the claim—that he is entitled to the privilege. The tariff provides for certification by the shipper or the fabricator.

Q From your experience in this type of work, would you say it is a fair statement that the theory underlying this whole operation is a theory of a continuous transportation from point of origin to the ultimate destination?

A Yes, sir.

Q And it merely stops off at this fabricating point while it is in transit?

A Yes, sir.

Q To be processed within the regulations of the tariff, and then goes on its way?

A Yes, sir.

Q (By Chairman Madden) These transit privileges operate, whether the point of origin and the ultimate destination are in the same state, or whether they are in different states?

A It applies to both.

Q To both situations?

A Yes, sir.

Q (By Mr. Kleeb) Assumine this situation, that the point of origin would be, say, in the northern part of the United States, the fabricating point would be south and the point of destination would be north, and the two local rates from the northern point to the southern point, and then from the southern point to the northern point again, would be quite a bit more in total than would be direct rate from the opint of origin right across the northern part of the state to the point of destination. If that were the case, would that difference be the actual saving?

A Less the three cents per hundred pounds for the privilege of fabrication.

Q Then, it would make no difference what the distances were?

A No. It would depend on the haul as to how much of a refund the fabricator would receive. On a long haul, the rate would be higher, and, of course, they would get a larger refund.

Q (By Chairman Madden) I am not sure that I understand. You understood Mr. Kleeb's question, did you, to say that if it is only one hundred miles from the point of origin to the point of destination, but the goods are shipped a thousand miles from the point of origin to the fabricating point and another thousand miles back from the fabricating point to the point of destination, how would the rate figure out under the transit privilege.

A Well, in order to explain that, a shipment might originate at Johnstown, come to Pittsburgh for fabrication and be reshipped to San Francisco. Now it depends on the rates how much of a refund they would receive. The rate may be high. I am not familiar with them, without looking them up. From Johnstown to Pittsburgh it might be around forty-five cents a hundred pounds.

Well, that through rate would be the same to San Francisco from Johnstown.

Q As from Pittsburgh?

A As from Pittsburgh, and they would save that complete difference in the local rate.

Q Save the entire forty-five cents?

A Yes.

Q Substituting the three cents for the forty-five cents?

A Correct.

(After informal discussion, off the record.)

Q (By Chairman Madden) We have discussed off the record the matter of the out of route hauls to which former questions referred. Will you make a statement now as to how that works?

A Well, do you want—

Q Just the statement that you made to me about this out of route haul.

A It would depend on the tariff whether the shipment would be entitled to the privilege if it moved out of route.

Q If there was a tariff for it, it would get it, if possible?

A Yes; if the tariff provided for an out of route movement, then a transit operator would be entitled to the privilege. Now, the tariffs also provide for back-haul. To illustrate what I mean, I will take a shipment forwarded from Aliquippa, Pa., the final destination being Chicago, Illinois. On the movement from Aliquippa to Pittsburgh, where the fabricator is located, there would be a back-haul. Then the shipment would be charged from Pittsburgh to final destination.

Q Do you mean that after fabrication it would come back right over the same route?

A Yes, sir.

Q To Aliquippa?

A Yes.

Q And through Aliquippa to Chicago?

A Yes, sir; but under the tariff the back-haul would be a movement from Aliquippa to Pittsburgh. A mileage basis is provided for the back-haul, and the back-haul is restricted, I think, to 300 miles.

Q But even there, in the case of a direct back-haul, the theory of a continuous transit is applicable?

A Yes, sir.

CHAIRMAN MADDEN: All right.

Q (By Mr. Kleeb) Is it true that no transit arrangement with a transit operator can come into effect without the approval of the Bureau, as a general rule?

A As a general rule; yes.

Q So that every fabricator or transit operator who claims this privilege has had it approved, as a general rule, by the Bureau, which has inspected or policed the operation?

A Yes, sir.

Q And every claim filed by one of these operators has to be approved by the Bureau?

A Yes, sir.

Q It is true, is it not, that this transit arrangement might be in effect at a particular plant or company and be an inactive arrangement?

A Yes.

Q Would that be brought about by the fact that the company just did not do the type of fabricating for a certain period of time which entitled them to that privilege?

A Yes, sir.

Q I presume that you have in your records various steel companies who are using this arrangement?

A Yes, sir.

Q Do you have the Jones & Laughlin Steel Corporation?

A Yes, sir.

CHAIRMAN MADDEN: Is that the right name of that corporation?

MR. KLEEB: Jones & Laughlin Steel Corporation.

Q (By Chairman Madden) That is the corporation which has plants at Aliquippa, Pennsylvania and Pittsburgh?

A Yes, sir.

Q (By Mr. Kleeb) In Pittsburgh, on the southside and Second Avenue?

A Yes, sir.

Q And I believe one or two other plants at some other places. I am not just certain. The Jones & Laughlin Steel Corporation, in compliance with the transit tariff, filed a request with some railroad, did it not, to avail itself of this privilege?

A Yes, sir.

Q What railroad was that?

A Pennsylvania Railroad.

Q Do you know whether or not such a letter applying for the privilege was sent to that railroad?

A Yes, sir.

Q I show you a copy of a letter addressed to Mr. Miller, General Freight Agent of the Pennsylvania Railroad, and signed by the Jones & Laughlin Steel Corporation, H. E. Graham, General Traffic Manager, and ask you if you saw the original of that letter (handing a document to the witness)?

A Yes, sir.

Q Will you read it over, please, and tell me if that is a correct copy of the original?

A (After examination of the document) Yes, sir.

Q On the bottom of that copy there is a notation addressed to H. M. Krill, Acting District Manager of the Trunk Line Freight Inspection Bureau. Will you say what that is?

A That was a request for the Bureau to install the necessary records, after investigation, for the privilege.

Q It was noted on the bottom of the original letter sent by Jones & Laughlin?

A Yes, sir.

MR. KLEEB: I offer that letter in evidence, that is, the copy of the letter.

CHAIRMAN MADDEN: It may be admitted.

(The copy of the letter was thereupon received in evidence and marked "Board's Exhibit No. 61.")

Q (By Mr. Kleeb) That letter is dated March 29, 1935, is it not?

A Yes, sir.

Q Is that the first time the Jones & Laughlin Steel Corporation applied to the Pennsylvania Railroad for the privilege under the transit tariff?

A Yes, sir.

Q So that it will be only from March 29, 1935, that you would have any record of their operations?

A Yes, sir.

Q As a result of that letter, did you, through your office, inspect the Jones & Laughlin Steel Corporation?

A Yes, sir.

Q What was the nature of their processing which you found was entitled to privilege, if any?

A Well, they used riveting and boring. That would be their main processes. The material is generally used in connection with structures, such as bridges, buildings or ships.

Q As a general rule, the processing of Jones & Laughlin Steel Corporation would be fabricating structural iron and steel to be sent to shipbuilders or bridge builders or something of the sort?

A Yes, sir.

Q (By Chairman Madden) Under this privilege, could they ship from their Aliquippa plant to their Pittsburgh plant and then on to destination, and get the privilege?

A Yes, sir.

Q (By Mr. Kleeb) It is true, is it not, with any steel company?

A Yes, sir.

Q That has two plants existing a part, that they can ship from one to the other, and then destination and get the privilege?

A Yes, sir.

Q Since March 29, 1935, has the Bureau kept any records, monthly or otherwise, of the processing of the Jones & Laughlin Steel Corporation?

A The Bureau does not keep that record. The fabricator is compelled to keep the record.

Q Well, does the Bureau make a report to the New York—a monthly report?

A No, sir. I will change that. They make what is known as a service and result report covering the various services rendered by the Bureau, which would, under the fabrication privilege, show the amount of the tonnage that was cancelled during that month by our transit inspector.

Q (By Chairman Madden) Would that be divided by fabricators, or would that just be the total tonnage of the station?

A The total tonnage of all fabricators that had the privilege would be consolidated.

MR. KLEEB: Mr. Reporter, will you mark these documents as Board's Exhibit No. 62-A to N, for identification?

(The documents referred to were thereupon marked "Board's Exhibit No. 62-A to N", for identification.)

Q (By Mr. Kleeb) Mr. Stoughton, I show you Board's Exhibit No. 62 for identification A to N, and ask you to start with A and go through N and explain what they are.

A This is a tonnage report compiled by the Jones & Laughlin Steel Corporation, their keystone department, on Trunk Line Freight Inspection Bureau form.

Sheet A consists of an inventory, showing the amount of non-transit tonnage that was on hand when the privilege became effective.

Sheet B—

Q What do you mean by "non-transit tonnage on hand"? Will you please explain that?

A All the tonnage on hand prior to the effective date of the privilege would be non-transit.

Q I see. So when this transit arrangement went into effect, that was the tonnage on hand as reported by the corporation, but none of it was entitled to the transit privilege because it was there prior to the date of its going into effect?

A Yes, sir.

Q All right.

A Sheet B—do you want me to describe this?

Q On Sheet B, I see the form is divided up into transit traffic and non-transit traffic. Will you explain please, why that division?

A Non-transit traffic is not entitled to any refund on any rate, while the transit traffic would be entitled to a refund under the privilege.

Q Does that form, Sheet B, show the total tonnage or pound weight of the shipments of the Jones & Laughlin Steel Corporation, keystone department, for the month of March, 1935?

A Yes, sir.

Q Did it show all of their tonnage?

A Yes, sir.

Q And it is divided up into that part which comes within the transit tariff and that part which does not?

A Yes, sir.

Q And that is why you divide your form up in that way?

A Yes, sir.

Q (By Chairman Madden) Was there some in that month which was within the transit traffic?

A Yes, sir.

Q That meant that the material which had come into that plant from some other point, and was there on hand at the end of that month?

A Yes, sir.

Q (By Mr. Kleeb) And was not forwarded from that plant during the month of March, 1935; I mean within the transit privilege?

A No, sir.

Q Does that figure represent pounds?

A Yes, sir.

Q So that 122,612 pounds were on hand in the month of March, which had come into the Jones & Laughlin Steel Corporation, keystone department?

A Yes, sir.

Q It was on hand in the month of March, 1935?

A Yes, sir.

Q And none of it, as fabricated, had been shipped out to the consignee at points of destination during that month?

A No, sir.

Q And that report so shows?

A Yes, sir.

Q And those figures were obtained from the corporation?

A Yes, sir.

Q Because they must supply them under the rules and regulations?

A Yes, sir.

Q Sheet C is similar to the former sheet, but for the month of April, 1935?

A Yes, sir.

Q Nothing went out that month?

A That is right.

CHAIRMAN MADDEN: Why do we not take off the figures there? Then you will not need the sheets. Why does he not read the figures off each sheet?

MR. KLEEB: All right. That will be better.

Q (By Mr. Kleeb) Read the total pound weight of steel or material on hand to be fabricated in April, 1935.

CHAIRMAN MADDEN: Transit material?

MR. KLEEB: Transit material only.

A 122,612 pounds.

CHAIRMAN MADDEN: And the amount that was shipped out during that month?

THE WITNESS: There was no tonnage shipped out during that month.

MR. KLEEB: That is March, 1935.

THE WITNESS: Yes, sir.

Q (By Mr. Kleeb) April.

A In April there was a total 532,629 pounds on hand at the close of the month.

Q Was any shipped out?

A None shipped out.

Q May?

A In May there was on hand 1,029,363 pounds.

Q Any shipped out?

A None shipped out.

Q None shipped out?

A No, sir.

Q What about June?

A In June there was on hand 1,261,244 pounds.

Q And what was forwarded?

A There was 304,583 pounded forwarded during the month.

Q July?

A In July there was on hand 1,876,412 pounds.

Q Was there any forwarded?

A There was an amount disposed of locally, 5,670 pounds.

Q August?

A There was on hand 2,574,129 pounds.

Q How much was forwarded?

A There was forwarded 1,877,183 pounds.

Q (By Chairman Madden) Your record there would not show the point to which that was forwarded?

A No, sir.

Q (By Mr. Kleeb) September?

A In September there was on hand 680,663 pounds, and there was forwarded 454,135 pounds.

Q October?

A There was on hand 261, 653 pounds; none forwarded during this month.

Q November?

A There was on hand 355,312 pounds, none forwarded during this month.

Q December?

A There was on hand 550,702 pounds; none forwarded during the month.

Q This total in pounds that you have been giving us for the various months are figures that were furnished you by the Jones & Laughlin Steel Corporation?

A Yes, sir.

Q You have, in setting up the forms, a section showing what was forwarded during the month and disposed of locally. Does that mean that anything not disposed of locally shipped to points outside the State of Pennsylvania?

A No, sir.

Q What is meant by "locally"?

A It is for local disposition. It might be disposed of right in the city, the tonnage on some job in the city, that would not be entitled to the privilege.

Q (By Chairman Madden) It needs to be cancelled out of their tonnage?

A Yes, sir.

Q So that they will not claim it on some other shipment?

A Yes, sir.

Q (By Mr. Kleeb) The claims submitted by the corporation, Jones & Laughlin Steel Corporation of these various shipments, you have given us up to the close of 1935, showing the points of origin of the commodities shipped to them and the point of destination of the commodities as shipped by them?

A Yes, sir.

Q And it shows the freight claimed?

A Yes, sir.

Q Where are the papers submitted by the company as for claim papers?

A They are in the hands of the Pennsylvania Railroad auditor at Philadelphia, Pennsylvania.

Q Did your Bureau, in the month of January, 1936, have a claim presented to it by the Pennsylvania Railroad, which had been given to the Pennsylvania Railroad by the Jones & Laughlin Steel Corporation?

A Yes, sir.

Q So as to refresh your memory, I hand you a record of your office of that claim, and ask you to tell us what the facts were (handing a document to the witness). What was the pound weight on hand in January, 1936, according to your records?

A There was on hand 640,112 pounds.

Q And there was forwarded during the month of January, 1936?

A 498,770 pounds.

Q You have a record of this particular month, of the claim number, the point of origin and the commodity and the point of destination; have you?

A Our transit inspector at the time the claim was handled, compiled a statement from the original that was on file regarding the claim.

Q And that original claim has since been forwarded to the auditor of the Pennsylvania Railroad?

A Yes, sir.

Q But the figures you have were taken from that original?

A Yes, sir.

Q Will you please state what that claim number was?

A Trunk Line Freight Inspection Bureau Claim No. F-3363; Pennsylvania Railroad Claim No. 489,408; Jones & Laughlin Steel Corporation Claim No. 18,031.

Q What was the total inbound tonnage to the Jones

& Laughlin Steel Corporation involved in this shipment?

A Do you want to separate it?

Q Well, give us the total first.

A The inbound tonnage was 498,770 pounds.

Q Were there more than one point of origin of that material?

A Yes, sir.

Q How may were there?

A Two.

Q What were they, and separate the tonnage as to the points of origin?

A From September 4th to November 24, 1935, there was 341,000 pounds originated at Munhall, Pennsylvania, this tonnage consisting of beams, angles, channels, plates and tees.

Q Do you personally know the company from whom that material was bought by the Jones & Laughlin Steel Corporation, at Munhall? What company was that at Munhall?

A No; I do not. I could—

Q You could just guess at it?

A Well, I could guess at it.

Q Well, don't bother to guess. Where did the balance of the pounds come from?

A 157,670 pounds originated at Lackawanna, New York.

Q When was that?

A From December 21st to December 27, 1935, this tonnage consisting of beams and angles.

Q The total of those two shipments makes 498,770 pounds?

A Yes, sir.

Q That is the total number of pounds which you gave that were forwarded by the Jones & Laughlin Steel Corporation during the month of January, 1936?

A Yes, sir.

Q And that shipment was entitled to the transit privilege?

A Yes, sir.

CHAIRMAN MADDEN: Where did it go?

MR. KLEEB: Oh, yes.

Q (By Mr. Kleeb) What were the points of destination of these 498,770 pounds?

A It was reshipped to Detroit, Michigan.

Q To whom?

A Consigned to J. A. Utley, general contractors, Detroit, Michigan.

Q What was the refund to the corporation on the Munhall, Pennsylvania, through shipment?

A $28.14.

Q And on the Lackawanna, New York, shipment?

A $342.14.

Q And the total?

A $370.28.

Q Are those savings in the nature of a refund, or is the payment of the freight charges held up until this thing is determined?

A This particular claim was held up until a recommendation was made by the Bureau in connection with the tonnage and classification of the shipment. The Bureau does not check the rates.

Q And did the Bureau give its stamp of approval on this shipment?

A There was a letter furnished to the auditor, with our recommendation.

Q Have you compiled the February, 1936, statement yet?

A No; we have not received that yet.

Q You have not received that?

A No.

MR. KLEEB: I believe that is all.

Q (By Chairman Madden) You do not have any record here of those through transit shipments that were made; that is, to whom, or where they were made?

A No, sir. The only record we have is our letter of transmittal to the auditor, as details of the transaction were already filed with the claim, the freight bills and the detailed statements.

Q And your letter of transmittal to the auditor does not give you enough detail from which you could refresh your recollection?

A No, sir.

Q Do you have any recollection as to whether this privilege has been used in connection with shipments from Aliquippa to Pittsburgh and on to destination?

A No; I have no recollection of whether any tonnage was forwarded from Aliquippa to their Pittsburgh plant. That other statement I made was a sort of explanation of the back-haul.

Q I mean it would come within the rules?

A Yes, sir.

Q If they did any of it?

A Yes, sir.

Q But you do not recall whether they had occasion to do any of it or not?

A No, sir.

CHAIRMAN MADDEN: I do not think of anything else.

Q (By Mr. Kleeb) Do you personally see these claims that are filed by the Jones & Laughlin Steel Corporation?

A Not at all times.

Q Have you seen any of the claims since March, 1935, up to the first of the year, 1936?

A That claim that I testified to here.

Q Other than that, have you seen any?

A No, sir.

Q You would not know, then, the points of origin or the points of destination on any of those other claims?

A No, sir; that would only come to me if the transit inspector desired some information in connection with the tariff, or on some point that he did not understand.

Q Do you remember whether or not that occurred in a Jones & Laughlin case?

A I don't recall it; no.

Q You would not be able to state anything, then, on these cases in 1935, as to what the point of origin of the shipment was?

A No, sir.

Q Or the point of destination?

A No, sir; and we have no record of the audit at the office.

MR. KLEEB: I think that is all.

CHAIRMAN MADDEN: Thank you very much. It has probably been some trouble to you to come here to testify.

THE WITNESS: That is all right.

CHAIRMAN MADDEN: We are much obliged to you.

MR. KLEEB: Yes; we certainly are.

(Witness excused.)

CHAIRMAN MADDEN: We will take a five minute recess.

(Whereupon a short recess was taken; after which the proceedings were resumed, as follows:)

ALBERT ATTALLAH, a witness previously sworn, was recalled by the Board and testified further as follows:

DIRECT EXAMINATION

Q (By Mr. Kleeb) You have previously been sworn in this proceeding?

A Yes, sir.

Q Are you the Mr. Attallah that testified at the previous session of this case?

A Yes, sir.

Q I believe you testified that you were a resident of Aliquippa since 1923?

A Right.

Q And during most of that time you have been an employee of the Jones & Laughlin Steel Corporation; have you?

A All the time.

Q All the time?

A All the time.

Q Do you know it to be a fact that the Aliquippa works shipped its products by barges down the Ohio River?

A Yes, sir; I do.

Q Is it common knowledge in the community there, would you say, that they ship by barges?

A Yes; by barges all the time.

Q And it is generally known in the community that they do that?

A Yes; it is generally known in the community that they do that.

Q Have you personally observed those barges going down the river with the names of "Jones & Laughlin Steel Corporation" on them?

A Many times.

Q As well as coming up to the plant with shipments?

A Yes, sir.

Q And do they have the Jones & Laughlin Steel Corporation signs on them?

A Yes, sir; also on the steamers. On the steamers they call it "Vesta", and then "Jones & Laughlin Steel Corporation" right on it.

Q (By Chairman Madden) Along with "Vesta"? They have both names "Vesta" and "Jones & Laughlin Steel Corporation"?

A Yes; and "Jones & Laughlin Steel Corporation."

Q (By Mr. Kleeb) "Vesta" is the name of the steamer?

A Of the steamer, I guess, or something like that.

Q And on the other steamer, have you ever seen the name "Harry Laughlin" on it?

A Yes, sir.

Q But there is a sign on the barge and the steamer "Jones & Laughlin Steel Corporation?"

A Right.

Q And would you say it is common knowledge, from the newspapers, that this corporation from the

Aliquippa works sends barges down the Ohio to Memphis and New Orleans?

A Yes, sir.

Q Without saying one way or the other about the authenticity of the newspaper reports, are you familiar personally, as a resident of the community, with that fact, that is, whether or not the Jones & Laughlin Steel Corporation, Aliquippa Works, does ship by barge out of the State of Pennsylvania and down into the southern states, down along the Mississippi?

A The shipments—I haven't seen where the destination was, that is, the different destination of the shipments; I haven't seen that. You have to see the file before you can see that, but there are a good many of the employees who work over there that have seen the shipments that have gone to outside the state by barges, outside the state, and they have told me, and I have seen the barges coming out and coming in loaded.

Q You say you have discussed the destination of these barges with employees who have worked in the department?

A Yes; many times.

Q And those employees have seen the shipping orders as to where these barges are to go?

A It is marked on the pipes to what company that pipe is shipped; but when it is loaded, it is printed on the pipe that wide (indicating).

Q A sticker or a tag, or something like that?

A No; it is something like lime, or something. It is something white. It is marked on the pipes.

Q And these employees saw that on the pipes?

A On the pipes.

Q They worked right with the shipments in loading them, etc.

A Yes, sir.

Q And did they tell you that many of these barge shipment of materials from the Aliquippa Works were being sent to other states down the river?

A Yes, sir.

Q Did they ever state that some of those shipments were for export, across the ocean?

A Across the ocean and one or two of the employees told me that the ones who put the names of the companies to where these pipes are supposed to be shipped—they told me that some of it goes to South America. They know just where that goes; that it was shipped by barge to South America and also the inspectors.

Q (By Chairman Madden) Do you know, Mr. Attallah, who loads these barges?

A Who loads them?

Q Yes.

A I know about two or three of the fellows or four of them, probably, who load the barges.

Q They are employees of the Jones & Laughlin Steel Corporation?

A Yes.

Q And that loading is done by employees of the Jones & Laughlin Steel Corporation?

A Yes, sir.

Q (By Mr. Kleeb) Just to clarify the record, you are not certain whether one of these boats has marked on it "Harry Laughlin" or "Henry Laughlin"; are you?

A Just "Laughlin" on it there. I am not certain of the first name, but I know there is a "Laughlin" on it, and "Jones & Laughlin" on that; yes.

Q Did you ever discuss with these people who are familiar with the destinations of the boats whether most of them went down the river outside of the State of Pennsylvania, or whether most of them were for local shipments?

A The most of the shipments—the product shipped from Aliquippa by barges—the most of it goes outside the State of Pennsylvania.

Q (By Chairman Madden) Are there any points down the Ohio River, and within the State of Pennsylvania, to which the Jones & Laughlin Steel Corporation ships products by barge; that is, do you know of any

ports down the Ohio and within the State of Pennsylvania to which they ship?

A Within the State of Pennsylvania?

Q Yes.

A I understand that they ship some to Philadelphia, that they have a warehouse in Philadelphia.

Q Would they ship there by barge?

A Now, I couldn't say whether they would ship there by barge or not. That is in the state. I couldn't say, because I don't know.

Q Do you know what towns there are down the Ohio River and within the State of Pennsylvania, below Aliquippa on the Ohio River?

A In the State of Pennsylvania?

Q Yes. Take us down the Ohio from Aliquippa and tell us what are some of the towns?

A Do you want—

Q From Aliquippa down the Ohio—down the other way.

A From Aliquippa the other way, the Ohio River goes through Beaver, Beaver Falls over there, and over there the River turns through Midland, near Midland there, and goes through the West Virginia line, down into West Virginia.

Q So that there are what towns in Pennsylvania, down the Ohio?

A What towns?

Q You mentioned Beaver and Beaver Falls and Midland.

A It goes right there, starting from Aliquippa, right out west Aliquippa by Monaco and when you get to Monaco there is a bridge between Monaco and Rochester, Monaco on one side and Rochester on the other side, and right alongside of Beaver, over there the river splits; it goes through one way and the river is split. There is another little river going on the other side split right at Rochester.

Q What is that—an island?

A No; it is not an island. It is split completely

over there. There are two rivers over there, instead of one.

Q There are not two Ohio Rivers, are there?

A No; I have forgot the name of the other one. It is a small one. It is between Beaver Falls and Beaver. It is split right there. It is just a little stream going through there.

Q Well, don't mind about the branches of the Ohio. Go on down the Ohio River.

A From there you go right through Midland, near Midland, and from Midland you go down to—that is the end of the State limit, over there, Pennsylvania. From there you go to Ohio.

Q Does the Jones & Laughlin Steel Corporation ship any large quantities of materials to any of those Pennsylvania towns that you have mentioned?

A Not as I know of—not by barges. They may ship some by trucks.

Q Do they ship any goods to Ambridge, to the bridge company over there, by barge?

A By barge?

Q Yes. I think it is the American Bridge Company.

A The American Bridge?

Q Does the Jones & Laughlin Steel Corporation ship anything over there by barge, do you know?

A Not that I know of.

CHAIRMAN MADDEN: I do not have any further questions to ask.

MR. KLEEB: That is all.

CHAIRMAN MADDEN: That is all. Thank you.

(Witness excused.)

CHAIRMAN MADDEN: The hearing in this matter will be adjourned at this time, subject to call by the Board.

(Whereupon at 11:45 o'clock a. m., further proceedings in the above-entitled matter were adjourned, subject to call by the Board.)

"This is to certify that the attached proceedings before the National Labor Relations Board, Fifth Region, in the matter of

Wheeling Steel Corporation
Jones & Laughlin Steel Corporation
Crucible Steel Company of America

(Jennings and Spauling Works.)

Case No. C-3
C-57
C-67
II-R-4

Room 406, Denrike Building, National Labor Relations Board, Washington, D. C., Thursday, April 2, 1936 and Friday, April 3, 1936.)

were had as therein appears, and that this is the original transcript thereof for the files of the Board.

SILLS REPORTING SERVICE,

By Harold B Aederson
Official Reporter.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Washington, D. C.

In the Matter of **Wheeling Steel Corporation** **and** **N. R. A. Lodge No. 155, Goodwill Lodge, No. 157, Rod & Wire Lodge No. 158, Golden Rule Lodge, No. 161, and Service Lodge No. 163 of the Amalgamated Association of Iron, Steel and Tin Workers of North America**	**Case No. C-3**
In the Matter of **Jones & Laughlin Steel Corporation** **and** **Amalgamated Association of Iron, Steel and Tin Workers of North America, Local 200**	**Case No. C-57**
In the Matter of **Crucible Steel Company of America, Spaulding and Jennings Works** **and** **Strip Steel and Wire Workers Union, Local No. 20084, A. F. of L.**	**Case No. C-67** **II-R-4**

406 Denrike Building,
1010 Vermont Avenue, N. W.,
Washington, D. C.
Thursday, April 2, 1936

The above-entitled matters came on for hearing at 10:00 o'clock a. m., pursuant to notice.

BEFORE:

J. WARREN MADDEN, Chairman;
JOHN M. CARMODY, and
EDWIN S. SMITH, Members of the Board.

APPEARANCES:

ROBERT P. WATTS
THOMAS I. EMERSON
A. L. WIRIN

Appearing for the National Labor Relations Board.

EDMUND M. TOLAND
Attorney for the General Council and Departmental Councils of Wheeling Steel Corporation.

PROCEEDINGS

MR. EMERSON: The attorneys for the Board have entered their appearance. I suggest that any other attorneys for any of the parties in the case also enter appearances now.

CHAIRMAN MADDEN: That may be done, if anyone is appearing for them.

MR. EMERSON: In the matter of Jones & Laughlin Steel Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Local 200, I offer as an exhibit the notice of the hearing in this case, together with an affidavit of service.

CHAIRMAN MADDEN: It will be admitted.

(The paper referred to was received in evidence and marked as Board Exhibit No. 63, Jones & Laughlin Steel Corp.)

MR. EMERSON: In the matter of the Wheeling Steel Corporation and N. R. A. Lodge No. 156, Goodwill

Lodge, No. 157, Rod & Wire Lodge No. 158, Golden Rule Lodge No. 161, and Service Lodge No. 163 of the Amalgamated Association of Iron, Steel and Tin Workers of North America. I also offer as an exhibit the notice of hearing together with the affidavit of service.

CHAIRMAN MADDEN: It will be received.

(The paper referred to was received in evidence and marked as Board Exhibit No. 20, Wheeling Steel Corporation.)

MR. EMERSON: And I likewise offer the same papers as an exhibit, in the matter of Crucible Steel Company of America, Spaulding and Jennings Works, and Strip Steel and Wire Workers Union, Local No. 20084, A. F. of L.

CHAIRMAN MADDEN: That will be admitted.

(The papers referred to were received in evidence and marked as Board Exhibit No. 8, Crucible Steel Company of America.)

MR. EMERSON: I now move that the evidence received at this hearing be considered in all three cases, unless it is otherwise specifically indicated.

CHAIRMAN MADDEN: That may be done.

MR. EMERSON: Mr. Wirin is going to examine the first witness.

CHAIRMAN MADDEN: You may proceed, Mr. Wirin.

Whereupon

EDWARD BERMAN

was produced as a witness for and on behalf of the National Labor Relations Board and, having been first duly sworn by the Chairman, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WIRIN:

Q Professor Berman, will you state your name, please?

A Edward Berman.

Q And you now live in Washington, D. C.?

A Yes, I am here temporarily. My permanent residence is in Illinois.

Q Are you connected with the faculty of any university?

A Yes; Associate Professor of Economics, University of Illinois.

Q Have you interested yourself in any special field?

A At the University of Illinois I had charge of studies in Labor since 1926, and made the study of labor economics my principal interest ever since about 1919.

Q Have you ever made a study of federal intervention in labor disputes?

A Yes.

Q With particular reference to presidential intervention?

A Yes, I made such a study. It was published by Columbia University Press in 1924.

Q And what is the technical name of the publication?

A "Labor Disputes and the President of the United States".

Q When did you make that study?

A I made that study beginning about 1922 and ending toward the end of 1923.

Q Did you make that study in connection with any work you were doing for a Doctor of Philosophy?

A It was a thesis which I presented for the final completion of my Doctor, and it was presented in December, 1923.

Q Have you written any material which has sub-

sequently been published, particularly with reference to books, in the field of labor relations?

A I have written a book which was published by Harper & Brothers in 1920, with the title of "Labor and the Sherman Act".

I have done considerable writing in the legal and the economic journals on questions relating to labor law and to industrial relations, and in the last several years I have written a number of books on life insurance.

Q Now, you say that the title of your book is "Labor Disputes and the President"?

A Yes.

Q In connection with the study you made in the course of your getting up the material which went into that publication, did you study the general problem of federal intervention? By that I mean intervention by the federal government, other than or in addition to the President.

A It was inevitable that I should come across instances of activities on the part of Congress, the passage of legislation, intended to prevent a particular dispute or to provide a means of settling it. Also I came across numerous instances where Congress actually passed a law setting up an investigating commission in connection with a particular strike or in connection with industrial unrest in general, and on the whole problem of injunctions in federal courts I came across this in connection with this particular study. But I have made that one of my major interests ever since I became interested in the problem of industrial relations.

Q Did you in the course of that study familiarize yourself with the contents of various governmental reports, including federal industrial commissions and industrial commissions in the forms of investigatory bureaus or bodies?

A I think I have read every volume of federal reports issued after investigation and issued as official

reports, as House or Senate reports, or put out by various government departments, involving labor relations, industrial relations, and particular disputes. And though I make no pretense of having read all nineteen volumes of the report of the commission in 1900, or the sixteen or so volumes of the report of 1912, I probably read four or five volumes in each set.

Q The volumes to which you have reference contain both hearings as well as findings by the commissions, do they not?

A That is right—testimony presented at hearings held by these commissions and various boards of investigation.

Q Did you read the findings and recommendations of all the commissions, in toto?

A Yes .

Q Now, as a more or less preliminary question, what have you found to be, in a general way, the forms of federal intervention in labor disputes through the years?

A If I may be permitted to refer to a better organized statement in the conclusions of this book, "Labor Disputes and the President", that will be an easier way of answering.

I might prefix that particular statement, however, by saying that there are three types of federal intervention. One is that of the federal judiciary; one that of Congress; and the last, and perhaps the one in which in this connection I was most interested, the activities of the executive or of his immediate officers in connection with these disputes.

I would like to mention very briefly the types of activity in which the executive or his cabinet officers or persons directly responsible to him have engaged in connection with disputes since 1894, which I think is the first instance of direct executive intervention in an industrial dispute.

There is, first, what might be called "friendly"

intervention by the president or by his agents, consisting of investigation of strike issues, letters to either or both sides urging settlement, letters to federal officials, mediators, or arbiters urging settlement, requesting or appointing federal or state officials to act as mediators, meeting contestants in conference, including actually acting as mediator or conciliator himself, or securing agreements to submit an issue to arbitration from the disputants, or making definite proposals for settlement, or securing changes in arbitration laws in order to obtain agreements.

A second general type of executive intervention may be described under the head of publicity. The president has frequently ordered the publication of the results of investigations made under his direction, in order to influence public opinion and thus hasten settlement.

Q In that connection, state whether these reports were official government reports by an agency appointed by the president.

A In some instances. As a matter of fact, most of the reports to which I assume you have reference were reports of committees appointed as the result of a resolution of Congress. But some of them were actually executive agencies. Sometimes the commission was set up under a Congressional law, but the appointment was in the hands of the president with the approval of Congress.

Another type of publicity was the president's publication of his own efforts at mediation and their results, in order to influence public opinion and thus hasten settlement.

A third type of executive intervention consisted of various measures which might be put under the head of coercion, first by securing the passage of a law making possible the ending of a strike by enacting some of the demands in a particular instance.

Q (Interposing) When you say "coercion", you mean coercion by law?

A Coercion by law, yes.

Second, threatening an investigation of one of the contestants with regard to prices and profits, hoping thereby to bring a sort of milder coercion to bear upon him and to get some concessions which would lead to settlement of the dispute.

Then there are certain very direct methods of coercion—first, the securing of an injunction for the purpose of averting or ending a strike.

Q Are you referring there to applications by the United States Government itself for injunctions?

A I am referring here to applications either at the direction of the president or at the direction of the Attorney General. Of course, district attorneys would make the application for injunction, but that was generally done under orders by the Attorney General.

Q In those instances, was the federal government the party plaintiff or defendant in the seeking of an injunction?

A Yes.

Q Can you tell us how many such instances you know of in which the federal government itself was a party plaintiff seeking injunctive relief?

A In connection with these particular disputes which I studied, it would be easier just to mention particular ones. That was the case in the Pullman strike of 1894. It was the case in the coal strike of 1919. It was the case in the Shopmen's strike of 1922.

There were a number of minor injunctions. Under prosecutions against labor organizations during disputes or to prevent the breaking out of strikes, the federal government actually sought injunctions under the Sherman Act in ten separate cases between 1893 and 1930. Of those ten suits for injunction, eight were successful, and that was the result of granting injunctions at the behest of the district attorneys, acting for the Attorney General.

Q Were those suits all filed in federal or United States district courts?

A All filed in federal courts.

Q And these were suits, as I understand it, to enjoin workers from certain activities, on the ground that they were violations of the Sherman anti-trust act?

A These particular ten suits were of that nature. Among the ten, however, there were one or two cases where injunction was sought both against the workers and against the employers, on the ground that a particular trade agreement constituted a violation of the Sherman act.

Q Yes.

A Most of them, however, were directed against workers and not against employers as well.

Q And do I understand your testimony that of the applications for injunction which were filed, the major proportion of them were granted by the courts?

A Of the ten government suits for injunction filed under the Sherman act, the first one in 1893, eight were successful.

Q Now, what instances, and what are their numbers, have there been of injunctions other than under the Sherman anti-trust act in which the government was party plaintiff and in which the defendants were workers?

A As you probably know, it isn't easy to say exactly how many injunctions were issued in the federal courts, and it is much more difficult to say how many have been issued in state courts. Not all of the injunction cases can find their way into the official reports.

Perhaps the most complete count of federal injunctions that I know of has been made by Professor E. E. Witte, who is Professor of Economics at the University of Wisconsin and who, over a period of many years, has legislative reference librarian for the State of Wisconsin made a practice of gathering data from all conceivable sources, that is, files of country newspapers and files of legal proceedings, and gathered

whatever he could. I think his account is more complete than that of any other person.

Q Is Professor Witte recognized as a competent student of labor relations?

A My belief about it is that without question Professor Witte is the outstanding authority among economists on the question of injunctions.

Q And has he published the material which you are going to refer to in any book?

A He published a book in 1932, I believe, entitled "The Government and Labor Disputes".

Q And is that recognized as an authoritative treatise on the subject of government in labor disputes?

A I should think it is the standard treatise.

Q Now, will you let us have the figure on that?

A Confining my attention purely to his own count of cases in which injunctions were issued in federal courts, there were 508 up to May 1, 1931. He starts his count back in the 80's, or the 90's. I think the first record of an injunction being issued in 1894—508 injunctions issued in federal courts, of which he found records.

I myself have come across cases of which there was no official record at all; and if it wasn't for the mere matter of chance, they would not have been known of.

Q Is there any record of the number of injunctions issued on the application of the government itself in the Railway Shopmen's strike of 1922?

A It is said that three hundred injunctions were issued.

Q What is the authority for that?

A George Wharton Pepper, in a speech before the American Bar Association, published in 49 American Bar Association reports, 174. That was delivered in 1924.

I must express my opinion that that count is too high. I don't believe that of the 508 injunctions issued

in a period of 50 years, that 300 of them were issued in connection with one strike—though I know from my own acquaintance with that strike that well over a hundred were issued in federal courts against the Shopmen.

Q Now, what other forms of federal intervention have come to your notice?

A There were two other types of executive intervention which I have not yet referred to. I mentioned the injunction. Another was the institution of court process for the purpose of averting or ending a strike, by making possible the arrest of strike leaders and strikers. There have been a number of cases under the Sherman act of that type where the the essential purpose was to break a strike. There have been a number of cases under other acts of less importance.

Perhaps it should be stated under this heading what happened in one strike fifteen or sixteen years ago, where deportation proceedings were instituted at the behest of the Attorney General and with the approval of the Secretary of Labor against certain strike leaders who were not American citizens.

Q And what strike was that?

A The steel strike of 1919. That has since become a much more common method.

And, finally, I would say there are two other types of coercion—

First there was the use of federal troops to end a strike, and there have been many instances of the use of such troops. And, in the end, there has been the appointment of marshals, supposedly under the control of the deputy marshals, supposedly under the control of the federal marshals in a particular strike area—and that appointment, of course, resting ultimately upon the shoulders of the president or his legal officers for responsibility. It should be said, however, that that has generally been done in connection with the enforcement of the injunction process.

Q Are there instances when persons deputized by a United States marshal as deputy marshals were compensated for their services by private employers who were engaged in a strike?

A That has been done in a large scale in numerous instances. During the Pullman strike of 1894, there were actually some five hundred or more—

Q Five thousand, wasn't it?

A Five thousand or so marshals actually appointed. It is interesting that those deputies were, as a rule, taken from the streets of Chicago, and that the special United States Attorney prosecuting the strikers and the strike leaders himself after several weeks protested bitterly to the Attorney General to the effect that these people were causing more trouble than anybody else. They were being paid by the railroad.

Q You said "special United States attorney". Will you let us have his name and whether or not he had any connection with the railroads prior to his designation as special United States attorney?

A I refer to Edwin Walker. The Pullman strike, I might say, was fought for the railways by what was called the General Managers' Association, organized essentially in order to carry on the fight against trade unions. It was an organization of the railroads centering in Chicago, and Edwin Walker had for years been connected with some of the most important railways in the country.

Q I think that covers that, Professor Berman.

MR. CARMODY: If you are leaving the question of the use of troops, I have a question on that.

MR. WIRIN: We are not leaving it; we intend to come back to it. Perhaps it would be well to ask the question now.

MR. CARMODY: Is there any record of the use of the national guard in strikes?

THE WITNESS: Yes. A number of these strikes in which the President sent troops were characterized

by the presence of the national guard in the first place and a generally unsatisfactory condition of affairs developing out of the use of the national guard. I think the most notable example is the coal strike of 1913-1914, where the Colorado national guard got in considerable trouble with the strikers and, after a good deal of pressure, President Wilson sent in federal troops.

There have been other instances, for example, in connection with the West Virginia mine disputes of 1921, where attempts were made by the West Virginia national guard and state police to suppress those disturbances. They apparently gave rise to more trouble than was occasioned previously, and President Harding sent in federal troops to attempt to enforce law and order.

And, of course, during the steel strike in 1919 that was done rather commonly. But the only use there of federal troops was in Gary, Indiana. National guards had been used there prior to the coming of federal troops.

There have been instances, on the other hand, where no national guard was used at all, but where federal troops were sent in at the very first instance of disorder.

BY MR. WIRIN:

Q Professor Berman, is the Pullman strike an instance of that?

A Yes; the Pullman strike gave rise to a very heated controversy which still rages.

Q Was that an instance where troops were sent by President Cleveland without the request of and over the protest of Governor Altgeld?

A Yes.

Q Now, with respect to the Pullman strike, will you state briefly the forms of federal intervention?

A The Pullman strike, the first thing the government did was to appoint a special attorney. It is in-

teresting in this connection to point out that that special attorney, Edwin Walker, was named at the suggestion of the General Managers' Association, who mentioned his name to the Attorney General, and immediately a telegram came back appointing him to represent the government in the conduct of the fight against the strike, or fight to prevent disorder during the strike. That was one method.

Another method was the seeking of injunctions. That is perhaps the first widely known example of the issuance of injunction for labor disputes.

Q Did one of the injunction proceedings come to the Supreme Court in the form of the case of In re Debs? Is that right?

A Yes.

Q Have you covered the matter of troops?

A Yes.

Q It is known how many federal troops were sent in? Well, if you don't know offhand, it isn't important. Now, what about marshals? Have you covered that?

A Yes; a great many marshals were appointed. They were appointed by the United States marshals.

Q Now, after the termination of the strike, was there any official governmental investigation of the causes and the history of the strike?

A The Act of 1888 provided for federal intervention in railway labor disputes. The act made possible the institution of machinery which might bring about a peaceful settlement of the disputes through mediation or arbitration. But it also gave the President power to appoint an investigating committee or commission, if he preferred.

Nothing was done in connection with an attempt to prevent the strike in advance, through the institution of methods of conciliation under the act, or arbitration. But after the strike was over and acknowledged by all parties to have been very effectively killed by the imprisonment of the strikers, the strike leaders, use of in-

junction, use of troops, use of marshals, President Cleveland appointed a commission under the law of 1888 to investigate the Pullman strike.

MR. WIRIN: May we suspend for a moment, now?

CHAIRMAN MADDEN: Yes.

MR. TOLAND: Mr. Chairman, I would like to offer in evidence, on behalf of the General Council of departmental councils, a copy of the minutes of meetings of the mill committees, together with copy of the constitution and bylaws of the Sheet Mill Alliances, together with an affidavit of one of the officers, James T. Lynn, who was the witness called by the Board at the hearing at Portsmouth.

I would also like to offer a copy of the complete list of wage scale matters taken up with the company by the various departmental councils, together with a copy of the constitution and bylaws of the electrical departmental council, together with an affidavit of Mr. Clark, chairman of the General Council, president of the electric department, verifying it that as far as he knows, the contents are true.

The reason I offer these at this time, Mr. Chairman, is that at the hearing at Portsmouth the Board subpoenaed three witnesses, members of the General Council, and it was not known that those men were to be called as witnesses until shortly before the hearing, and we did not have the time to prepare this data in order that it could have been introduced at that time. I would like to offer this now, in order that the whole question, so far as the General Council and the departmental councils are concerned, and their activities, can be on the record for further consideration, in the event the case goes to the courts.

CHAIRMAN MADDEN: That will be admitted. Let it appear that these are in connection with the Wheeling Steel Corporation case, only.

(The papers referred to were received in evidence and marked as Interveners' Exhibit No. 1 and Interveners' Exhibit No. 2, respectively, Wheeling Steel Corporation.)

MR. WATTS: If the Board please, I have no objection to the receipt of these proposed exhibits. I should like, however, to reserve the right, after examination of the exhibits, to cross examine the two gentlemen whose affidavits are submitted here, in authentication of the documents; and if we desire to cross examine them we will indicate that before the close of the proceedings.

MR. TOLAND: May I make this suggestion, off the record, in connection with the two documents? At the original hearing at Cincinnati, there was testimony as to the matters that the General Council and the departmental councils had taken up with the company. I am perfectly willing to stipulate that so much of the testimony of those men at Cincinnati as is in connection with these matters be made a part of this record.

MR. WATTS: Well, of course, it is already a part of the record.

MR. TOLAND: In Cincinnati?

MR. WATTS: Yes.

MR. TOLAND: It is already combined herein?

MR. WATTS: Yes.

MR. TOLAND: I think not. I think we stipulated the first part, and that that is all. We didn't stipulate the testimony of the subsequent witnesses.

As I say, as far as that is concerned, I am perfectly willing for the Board to take any part of that to be stipulated as part of this record in support of these documents.

CHAIRMAN MADDEN: What do you say to that, Mr. Watts?

MR. WATTS: That is agreeable.

MR. TOLAND: Mr. Watts and I could sit down and pick out any part of the testimony that may be necessary, and agree on it.

MR. WATTS: May we not have a stipulation on the record now that the Board in considering these exhibits may consider any of the testimony given at Cincinnati in that conenction?

MR. CARMODY: You have that as part of the stipulation. There are other bits of the evidence in that Cincinnati hearing that ought to be part of the record. However, it is not essential, as I understand a good deal of the ground was covered again at the hearing at Portsmouth.

I have in mind particularly the testimony of the one witness who went rather exhaustively into the history of the development of the union after the management had called a meeting to set up an organization down there. I don't know whether you want to stipulate that that be in, or that you give some attention to that afterward. I don't think that was repeated at Portsmouth. I don't know what the man might say if he were on the stand again.

MR. WATTS: Of course, Mr. Reed is not present representing the company, and these stipulations made by Mr. Toland and myself will not be binding upon Mr. Reed. I think, considering the details brought out at the Portsmouth hearing, they would cover the ground at Cincinnati.

MR. TOLAND: Will you mark those exhibits? I don't know whether I introduced any at Portsmouth or not.

MR. WATTS: Yes, you did. You introduced a letter.

MR. TOLAND: Well, I turned them over to you and you marked them.

MR. WATTS: Mark them as Interveners' exhibits.

CHAIRMAN MADDEN: Mr. Reporter, note that

Mr. Toland's reference to the Cincinnati hearing relates to the proceedings there on November 18, 19, and 20, 1935, in the matter of the Wheeling Steel Corporation, Case No. R-1.

MR. WIRIN: May we proceed now, Mr. Chairman?

CHAIRMAN MADDEN: Yes.

BY MR. WIRIN:

Q Now, Professor Berman, I think I was inquiring about an investigation by presidential commission of the causes and the history of the Pullman strike. Are you familiary with the findings of that commission?

A I have read the report and all of the hearings—some two thousand pages.

Q Will you state briefly what the findings of the commission were with respect to the causes of the Pullman strike?

A The commission pointed out that though there were a number of immediate causes, the principal ones had to do with the fact that wages had been reduced; that the rental of company houses, in which most of the employees lived, had been maintained at their previous level. The company pointed out—

Q You mean the commission?

A The commission—I beg your pardon. The commission pointed out that a protest grievance committee of the men, organized after a meeting of the men to represent them, somewhat informally, had appeared to protest against this thing, and the company had assured the members of that committee that there would be no action against any of the membership who appeared to make the protest.

Within three or four days, however, the outstanding leaders of that committee were discharged; and that immediately led to a strike.

Despite that immediate situation, however, and the occasion for the widespread boycott by the American Railway Union, which was the most important phase of the so-called Pullman strike, the commission pointed

out that at the bottom of the whole situation was the company's attitude with respect to dealing with its employees.

The commission said, for example, that—

> "The Pullman Company is hostile to the idea of conferring with organized labor in the settlement of differences arising between it and its employees."

It said, further:

> "The Company does not recognize that labor organizations have any place or necessity in Pullman, when the company fixes wages and rents, and refuses to treat with labor organizations. The laborer can work or quit in the terms offered, that is the limit of his rights. This position secures all the advantages of the concentration of capital, ability, power and control for the company in its labor relations and deprives the employees of any such advantage or protection as a labor union might afford. In this respect the Pullman Company is behind the age."

Q What is the date of that report?

A It is 1894.

Q I will ask you whether or not the commission, in its conclusion, urged employers to recognize labor organizations and bargain collectively with them.

A This is a direct quotation from the report:

> "The Commission urges employers to recognize labor organizations, that such organizations be dealt with through representatives. It is also satisfied that if the employers will consider employees as thoroughly essential to industrial success as capital, and thus take labor into consultation at proper times, much of the severity

of strikes can be tempered and the number be greatly reduced."

Q I show you a document and ask you whether or not it is a fair summary of the work of the commission, and whether the quotations are correct quotations from the official report.

A Of course, I have not memorized the quotations; but that certainly is the gist of their suggestions.

Q And is it a fair summary of the report?

A It is a fair summary of the important aspects of the report.

MR. WIRIN: We will ask the Board at this time to take judicial notice of the report of the commission, which is officially designated as "Report of the Chicago Strike of June-July 1894, by the United States Strike Commission", and which is an official government publication printed by the Government Printing Office in 1894.

We have the original volume here, but it is a stout volume and I think for the purposes of this proceeding it is sufficient that we ask the Board to take judicial notice of its content.

We would like to offer in evidence the summary of the report and the quotations, which Professor Berman has identified as being fair and correct.

CHAIRMAN MADDEN: It will be admitted.

(The paper referred to was received in evidence and marked as Board Exhibit No. 21; Wheeling Steel Corporation; Board Exhibit No. 64, Jones & Laughlin Steel Corporation; and Board Exhibit No. 9, Crucible Steel Company of America.)

BY MR. WIRIN:

Q Now, Professor Berman, how many members were there on the commission? I don't know whether I asked you that.

A I think there were three—Carroll D. Wright, who at the time was Commissioner of Labor, being the chairman.

MR. CARMODY: Commissioner of Labor of the United States?

THE WITNESS: Yes.

BY MR. WIRIN:

Q Did the personnel consist of impartial or neutral or nonpartizan representatives?

A I am rather certain that there was no attempt on the part of President Cleveland to constitute the board according to its interest in industrial dispute.

Q As I understood your testimony concerning the Pullman strike, there was an abundance of federal intervention during the strike, in an effort to stop the strike, but no effort to arrive at the causes of the strike until after the strike had taken place? Is that correct?

A I should say so. I should say the only effort to arrive at the causes of the strike was an accessory after the fact. Nothing was done to prevent it or suggest how to avoid that particular disturbance.

Q Now, I ask you to call the attention of the Board to any federal intervention during the administration of President McKinley.

MR. CARMODY: Before you leave that Pullman strike, I have a question or two. What work did the people do who were on strike?

THE WITNESS: The people who were originally engaged in the original strike in Pullman, just outside Chicago, were workers in the car shops. They had just previously joined the American Railway Union, which was organized on an industrial railway industry basis, constituting membership from all the railways, all railway workers.

When it became perfectly clear—and I think the testimony there is conclusive—that the Pullman Company would not make any concessions whatever to these people who had gone on strike and would not reem-

ploy the persons discharged, the American Railway Union—which in that same month happened to be holding its annual convention in Chicago, about the third or fourth week of June—heard reports on this strike at Pullman and it attempted to try to get the company to meet with a committee of the work[illegible] and of the American Railway Union.

They sought various ways to secure some peaceful settlement of the dispute. Not only was the committee not received, but no communication addressed to the company, to the Pullman Company, were acknowledged; no answer was made to any such communication.

MR. CARMODY: Do you recall by whom the communication from the American Railway Union was handed to the Managers' Association?—by some mayor?

THE WITNESS: That, I believe came somewhat later. The officers handled it to begin with.

It should be pointed out that, having received no response, the American Railway Union passed a resolution to the effect that unless the company met with the representatives of the workers to consider this particular dispute, a nation-wide boycott of Pullman cars would go into effect as of a certain date. And then various government officials—the Mayor of Detroit, the Mayor of Chicago, and various civic persons—attempted to use their influence to get the Pullman Company to meet with the committee of the strikers. But at the date set the strike became a nation-wide boycott affecting the entire central part of the country and most of the other sections.

MR .CARMODY: The strike started among shop workers, working on cars, and essentially Pullman cars?

THE WITNESS: Yes.

MR. CARMODY: Pullman cars were a luxury, and not an absolute necessity to travel?

THE WITNESS: That is true.

CHAIRMAN MADDEN: These shopmen—they were repairing cars, or making cars?

THE WITNESS: Both. That is, the work done at the Pullman factory outside of Chicago is still being done, the same type of work, the manufacture and repair of Pullman cars— and, to a certain extent, the building of coaches for other railroads. At that time it was mostly the buildings of Pullman cars.

MR. CARMODY: Did they at any time build locomotives there?

THE WITNESS: No.

MR. CARMODY: Or freight cars?

THE WITNESS: No.

BY MR. WIRIN:

Q You have testified about the refusal of the Pullman Company to meet with representatives of the American Railway Union. Was there any refusal by the General Managers' Association to meet with representatives of the American Railway Union?

A As soon as the American Railway Union adopted a resolution setting the date for a nation-wide boycott of Pullman cars, the General Managers' Association started and planned its campaign for defeating that strike. One method was to attach a Pullman car to every passenger train leaving Chicago, whether or not such train had theretofore carried such cars.

Whereupon various officials in that section of the country urged the General Managers' Association to meet with the representatives of the workers. In some cases those requests were not even acknowledged; but there were visits made by the Mayor of Detroit, I believe, by the Mayor of Chicago, and a number of other officials, without any results whatever. The company went on ignoring these requests, and by this time a special district attorney had been appointed and a suggestion was made that a certain type of injunction be granted under the Sherman Act. The injunction was forthcoming, and thereafter it was only a matter of the rapidity with which the strike would be concluded.

Q Now, let us proceed to President McKinley. Did you find any instance of his intervening in a labor dispute?

A There is only one instance of which I was able to find a record. It had to do with the disturbance in the metal mining district in Idaho, the Coeur d'Alene.

Q Can you tell us whether or not the question of the recognition of the miners' union was one of the fundamental causes of the strike?

A The strike, and disturbances of that kind, were rather common there, and in much of this dissatisfaction and disturbance there was some violence. Thereupon the operators of the mines decided they would have nothing further to do with the Western Miners' Union, to which the metal workers belonged, and they put into effect a permit system the effect of which was to make it practically impossible for anybody to remain in the community if he were a member of the union. Nobody could get a job unless he had a permit, and he could not get a permit unless he promised not to belong to the union.

The President sent troops in that area and the troops were used in order to enforce the permit system. For a period of some six months, federal troops were being employed in Idaho for the essential purpose, whether or not so recognized by the President, of destroying the Western federation of the miners.

Q State whether or not two of the demands of the union were as follows: One, an increase in wages; and, second, a recognition of the union.

A That is correct.

Q And please state whether or not the operators were willing to grant the first demand, an increase in wages, but announced that all men joining the union would be discharged.

A That is right.

Q Now, was there an industrial commission in 1898 that investigated and reported concerning the

causes of strikes and labor and industrial conditions in any states in general?

A There was such a commission appointed as the result of the passage of an act of Congress, 1898. The commission had five members from the Senate and five from the House, and nine others who were to be fairly representative of different industries and employment, appointed by the President—all of this to be with the consent of Congress.

Q Can you tell us how many witnesses it examined and how many experts appeared before it?

A There were, I believe, twenty or thirty experts, and about five hundred witnesses.

Q Now, what was the general nature of its investigation?

A It had a very wide task in investigating almost any problem which related to the situation in industry. It investigated immigration, agriculture, manufacturing, business, and industrial problems, as they related to those subjects.

Q And did it make a report?

A It made a report and published a very voluminous report, of many hearings.

Q Some nineteen volumes?

A That is right.

Q Running into many thousands of pages?

A Yes.

Q Now, will you let us have a brief summary of the highlights of the report of the commission, in so far as it involved labor relations, with particular reference to the problem of collective bargaining?

A I should say that some of the outstanding things in the commission's report related to the justification for labor organizations. It, for example, said this—and this is verbatim:

"It is readily perceived that the position of a single workman face to face with one of our great modern combinations, such as the

United States Steel Corporation, is in a position of very great weakness. A workman has one thing to sell—his labor".

Then I will leave out some sentences, and continue:

"Under such conditions there is little competition for the workman's labor. Control of the means of production gives power to dictate to the workingman upon what terms he shall make use of them."

If I may put in something here, in the case of Holden versus Hardy, the Supreme Court in the year 1898 rendered a decision upholding the constitutionality of an eight-hour law for miners and workers in smelters in the State of Utah, and among the remarks of the Supreme Court in upholding that law was this one:

"The position of the worker and the employer is such that the worker is constrained to accept the terms imposed upon him by the employer."

Q In making that remark, you are quoting from memory, I take it?

A I am quoting from memory. I think, however, the sentence, "The position of the worker and the employer is such that the worker is constrained to accept the terms imposed upon him by the employer", is pretty nearly verbatim.

MR. SMITH: What that a general observation by the court?

THE WITNESS: It was an observation which had general reference; the court used it to justify the interpretation of a state law on the ground that thereby the state would increase the economic strength of the workers and thus put them more nearly on a par with the position of the employers. And the court held that the 14th Amendment was not violated by such a law.

I think it is very significant that this statement made

in connection with that justification under the 14th Amendment upholding that Utah law is almost identical with the justification stated by the industrial commission reporting in 1900 in connection with its discussion of trade unions.

BY MR. WIRIN:

Q I show you what purports to be a summary of the final report of the Industrial Commission, prepared in accordance with an Act of Congress approved June 18, 1898, and ask you whether or not this represents a fair summary of the findings of the commission and whether the quotations, to the best of your knowledge, are correct quotations.

A As far as I know, the quotations are correct, and the gist of this summary certainly accurately represents the opinion of the board.

MR. WIRIN: We will ask the Board to take judicial notice of the entire report, without requesting the Board to read the entire report and hearings, consisting of some nineteen volumes; and we will offer in evidence this summary at this time, as an exhibit.

MR. CARMODY: This is properly identified with the appropriate reference in the record?

MR. WIRIN: I think so.

Let the record show that this report, the designation of which I have just read, is the report of the same commission that Professor Berman has been testifying about.

CHAIRMAN MADDEN: It will be admitted and the reporter will mark it as an exhibit.

(The paper so referred to was received in evidence and marked as Board Exhibit No. 22, Wheeling Steel Corporation; Board Exhibit No. 65, Jones & Laughlin Steel Corporation; and Board Exhibit No. 10, Crucible Steel Company of America.)

MR. WIRIN: I would like to call the attention of the Board, for the purpose of saving time, to the fact that this commission of 1898 recommended the setting up of a national board of arbitration by Congress, recognizing the necessity of national federal action in labor disputes, and call particular attention to the following language:

> "Many labor disputes not connected with interstate commerce yet affect the welfare of more states than one."

In reliance upon that theory of law and the factual situation, they recommended the setting up of national federal machinery for the averting of labor disputes.

BY MR. WIRIN:

Q Now, Professor Berman, President Theodore Roosevelt—

MR. CARMODY: May I ask one question there. Do I understand that this report made in 1898 referred to the United States Steel Corporation?

THE WITNESS: Pardon me—1900, sir.

MR. CARMODY: That this report in 1900 referred to the disparity in bargaining power as between the United States Steel Corporation and its employees?

THE WITNESS: No; it gave the United States Steel Corporation as an instance of a corporation so large that it was rather inconceivable that an employee's bargaining power could be on an equality with it.

MR. CARMODY: Why, at that time it was nowhere near so large as it now is.

THE WITNESS: It started out as a billion-dollar corporation, and is much larger now.

MR. CARMODY: It was just a conglomeration of small plants at that time, and nowhere near as well organized technically and on the personnel side as now.

Do you know at that time whether they had a thoroughly experienced and widely known man as head of the personnel department?

THE WITNESS: I am sure they didn't. I think the

United States Steel Corporation was in process of formation and probably hadn't existed more than a month or so when this report was written.

MR. CARMODY: And that was thirty-six years ago.

THE WITNESS: Yes.

MR. CARMODY: That is all.

MR. WIRIN: Apropos of the question asked by one of the members of the Board, I would like again to call the attention of the Board to the fact that thirty-six years ago—or, really, the report was issued in 1902, so that it is thirty-four years ago—the commission recommended national action with respect to labor disputes, as affecting commerce between more states than one.

BY MR. WIRIN:

Q Now, Professor Berman, let us move on to President Theodore Roosevelt. Did he have occasion to intervene in labor disputes?

A President Roosevelt, probably next to President Wilson, intervened more frequently in labor disputes than anyone else. The first and perhaps the most important of his interventions was in connection with the anthracite coal strike of 1902.

Q What did President Roosevelt do with respect to that strike?—briefly.

A The strike started and proceeded for some months. A great many complaints reached him, especially from public officials of New England and New York, pointing out that with the approach of winter those states, depending as they were for domestic heating purposes upon anthracite fuel, were likely to suffer very severe hardships; and asking him if he wouldn't do what he could, in order to bring about a settlement.

The President succeeded, after considerable difficulty, in bringing about a meeting between representatives of the United Mine Workers and of the coal operators. As the result of that meeting it was agreed

that he should appoint a commission which would investigate the dispute, make recommendations, and decide the important questions involved.

Q State whether or not one of the causes of the strike was the refusal in the first instance by the operators to meet with representatives of the United Mine Workers and discuss the matter of a new wage scale.

A The operators had, as a matter of fact, never made prior to that time an agreement with the United Mine Workers covering anthracite coal, and they refused to meet with the representatives of the miners.

Q Can you tell us how long the strike lasted, prior to its termination?

A It lasted for five months.

Q And how many workers, approximately?

A About 150,000 workers.

Q Did this strike commission to which you have referred make an official report?

A It did.

Q And can you briefly summarize the highlights of the report with respect to the findings of the commission concerning the causes of the strike, and any recommendations that the commission made for the averting of the strike?

A I think that this brief quotation from the report is pertinent:

> "The occasion of the strike of 1902 was the demand of the United Mine Workers of America for an increase in wages, and decrease in time. The cause lies deeper than the occasion, and it is to be found in the desire for recognition by the operators of the miners' union".

Q Did the commission make any estimate as to the losses from the strike?

A It estimated that losses in wages amounted to some twenty-five million dollars; that there were twenty-eight million dollars lost in freight receipts; and that the United Mine Workers in the payment of

relief went to the expense of one million eight hundred thousand dollars.

Q What were the recommendations of the commissions with respect to the averting of future strikes? —briefly.

A The commission suggested, after going into a great deal of detail about the inequalities in bargaining power, that a plan be set up under which all questions of difference between the employer and his employees should be considered in conference; that employees shall have the right to choose from their own ranks workers to represent them—and the commission emphasizes the fact that that right shall be the right to choose representatives or agents as the men may choose; and to have those agents officially recognized as the representatives of the men by the operators.

Q I show you what purports to be a summary of the report of that commission, and quotations from the findings of the commission, and ask you whether or not the summary is a fair one and the quotations correct, to the best of your information.

A I believe so, yes.

MR. WIRIN: We will ask the Board to take judicial notice of the report to the President on the anthracite coal strike of May to October, 1902, by the Anthracite Coal Commission, which is an official government publication printed by the Government Printing Office in 1903, and which is designated as Senate Document 6, of the 58th Congress, Special Session. We offer the summary and the quotations into evidence.

CHAIRMAN MADDEN: It will be admitted.

(The paper referred to was received in evidence and marked as Board Exhibit No. 23, Wheeling Steel Corporation; Board Exhibit No. 66, Jones & Laughlin Steel Corporation; and Board Exhibit No. 11, Crucible Steel Company of America.)

THE WITNESS: Mr. Wirin, may I suggest, in reply to a question or in reference to a statement I made with respect to the time of the publication of the report of the commission, when I said "1900", I think the testimony should be corrected to read "1902".

That would also affect testimony about the age of the United States Steel Corporation at that time—not several months but about two years old.

MR. CARMODY: A small baby, and not just an infant.

MR. WIRIN: I would like to call to the attention of the Board that this commission in its report of 1902 recommended, as a means of preventing labor disputes, federal action and the enactment of an Act of Congress which would authorize the President to appoint commissions with powers of investigation and the power to subpoena, and that in making that recommendation the committee stated that the jurisdiction of Congress to enact such legislation existed in those cases where the free and regular movement of commerce between the states was involved; and that that commission followed the recommendations of Charles Francis Adams, who had written a paper that was addressed to and delivered before a socialogical association and which contained a draft of an act providing for presidential intervention in the form of appointment of investigatory commissions, and which used the phrase "free and regular movement of commerce among the several states" as the basis for the jurisdiction of Congress in enacting such legislation.

MR. CARMODY: Is that the committee of which Senator Boise Penrose was a member?

MR. WIRIN: No; Senator Boise Penrose was a member of the former commission of 1898.

This was a commission—

BY MR. WIRIN:

Q Perhaps you had better state the membership of that commission.

A Of the Anthracite Coal Commission?

Q Yes.

A It consisted of George Gray, as chairman; Carroll D. Wright, Commissioner of Labor, as recorder; and five other members designated to represent the general interests of the parties involved—so that it was a commission of seven.

Q Now, did President Roosevelt dispatch troops in a strike in Morenci, Arizona?

A Yes; that was done in 1903.

Q What action did President Roosevelt take with respect to the miners' strike?—referring to gold miners, in 1907.

A There, again, troops were sent. Troops had also been sent to a Colorado strike of miners, in 1903, 1904.

Q Let us move on to President Wilson. Did President Wilson intervene in labor disputes?

A I think his record of intervention is more extensive than that of any other President.

Q With respect to a threatened strike of conductors and trainmen on the eastern railways, what action did the President or any other branch of the federal government take?

A In that instance the employers and the employees on the railways, the eastern railways, came to a breakdown of negotiations which commenced in 1912. By 1913 it looked as though a strike would take place. In June or July an actual strike vote was taken, and the conductors and trainmen voted overwhelmingly to go on strike.

The President asked the two parties to meet with him in conference. On examination of the issues, it was made clear to him that the strike could be avoided by arbitration, but not by arbitration according to the Erdman Act of 1898. The Erdman Act provided machinery for the mediation of labor disputes on the railways, and it also provided for the setting up of a board

of three parties, one representing each of the contestants, and a third party impartial.

The railways had had what they regarded as an unfortunate experience in having an impartial person render a decision. The impartial person, being neither a representative of the workers or of the employers, was likely, in their opinion, to be ignorant of the issues. As a consequence, they refused to give an important issue for settlement over to one person.

On examination of the situation it was made clear that if the law would provide for arbitration by a board of three, or a board of six, a settlement could be made of the issues and the matter settled by arbitration.

As the result of that situation, the President called into conference not only the most important officers of the railways and of the railway union, but also the majority and minority representatives and leaders on the flood of Congress. There was at that time an act before Congress to modify the Erdman law. An agreement was made that the law should take a certain form, and the President thereupon used his influence to have the law passed in the form which had been agreed to in conference among the parties.

Q And was such a law passed by Congress?

A Such a law actually passed and became known as the Newlands Act.

Q And is that an example of federal intervention in the form of joint action by both the President and Congress with respect to a particular dispute?

A The President suggested the way of settling the thing and the Congress passed the measure which would provide means of arbitration to avoid the strike.

CHAIRMAN MADDEN: We will recess for five minutes.

(Recess.)

MR. WIRIN: At this time, with the permission of the Board—and we already have Professor Berman's

permission, we would like to interrupt his testimony and put on Mr. Kerwin, whose testimony will be very brief.

CHAIRMAN MADDEN: Very well.

Will you be sworn, Mr. Kerwin.

Whereupon

HUGH L. KERWIN

was produced as a witness for and on behalf of the National Labor Relations Board and, having been first duly sworn by the Chairman, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WIRIN:

Q Your name is Hugh L. Kerwin, Senior?

A No "senior" about it—just Hugh L. Kerwin.

Q You live in Washington?

A Yes, sir.

Q And you are the Director of Conciliation?

A I am.

Q And is that a department or a service of the United States Department of Labor?

A It is a service of the United States Department of Labor.

Q How long has the Department of Conciliation been in existence?

A It came into existence with the creation of the Department of Labor, on March 5, 1913.

Q And how long have you been connected with the Department of Conciliation?

A Well, I have been Director of Conciliation since 1917. Prior to that I had a part with the Secretary of Labor in handling some of the matters of conciliation, directly under his jurisdiction.

Q You have been Director of Conciliation through Republican and Democratic administrations, I take it?

A Yes.

Q And do you have any persons under your charge who seek to conciliate and adjust labor disputes?

A Yes; we have commissioners of conciliation, field representatives.

Q How many commissioners of conciliation do you have now?

A We have thirty-eight, in the field.

Q And what has been the number of commissioners of conciliation during the last few years? How has the number ranged?

A On an average of thirty to thirty-five commissioners, except during the World War period, when we had as high as fifty-five or sixty.

Q Do they all work under your supervision?

A Yes.

Q Are you familiar in a supervisory way with the work that they do?

A I am.

Q What was the occasion for the creation of the Department of Conciliation?

A Well, the organic act of the Department of Labor states that the Department of Labor was created to foster and promote the interests of the wage earners of the United States and to advance their opportunities for profitable employment. Then, following that, it was stated in the act that the Secretary of Labor was authorized to act as a mediator or to appoint commissioners of conciliation in industrial disputes, whenever in the judgment of the Secretary of Labor the interests of industrial peace may require it to be done.

Ever since along before the war, immediately following the Civil War, there has been a demand for labor for a separate department in the federal government, presided over by a cabinet officer or official. And from time to time, in an attempt to meet the wishes of labor, they had created the Bureau of Labor and the Bureau of Labor Statistics, and finally the De-

partment of Commerce and Labor was created in 1903.

Labor continued to persist in its efforts to have a department created in the interests of the wage earners of this country, so that finally, in 1913—those were the days of the 62d Congress—they put into existence the Department of Labor by separating four bureaus from the Department of Commerce, and providing for mediation service or conciliation service.

Q Now, since its inception, how many labor disputes has the Department of Conciliation concerned itself with? Do you have those figures, or approximate figures?

A Approximately fifteen thousand nine hundred specific disputes.

Q And do you have an approximation of the number of workers that were involved in those disputes?

A Nearly sixteen million workers or wage earners.

Q Now, will you describe briefly the functioning of your service and the manner in which your department seeks to adjust or conciliate disputes—just giving us a brief sketch of it?

A Yes. The Secretary, first of all, was authorized to intervene whenever in the judgment of the Secretary the interests of industrial peace may require it to be done; but we have pursued a policy in the Department of Labor of the general proposition of awaiting the request of someone, some one of three parties—the employers, the employees, or the public directly affected—although we have not relinquished the right to intervene when a major proposition confronted the government. Frequently the Secretary has instructed us to proceed to take up the case without awaiting a call from one of the three parties mentioned.

When the commissioner of conciliation is assigned to a case, his functions are purely those of a negotiator,

mediator, or it might be somewhat analogous to a consular officer in the State Department. He seeks to bring the contending interests together, without being working under drastic instructions to follow out any set principles, because, in the handling of problems of conciliation, a great degree of elasticity is necessary, because no two strikes or threatened strikes are exactly alike. They may be in the same industry and in the same city at the same time, with the same demands, or with the same grievance; but they differ. So that the conciliator must of necessity be somewhat free in his movements and in the manner in which he handles the affair.

Now, he tries to bring about a situation whereby the directly interested parties, the employers and the employees, will solve their own problems in their own way, guided and advised and counseled by a man who has had experience in somewhat similar situations and who has seen other arrangements tried out in various strikes and threatened strikes and who can bring to bear at the proper time this information and suggestion and recommendations, so that while his work is entirely voluntary and he has no right to make any decisions and orders, or to seek to enforce any terms. He does submit the recommendations, suggestions, and he works with the respective parties in joint conference and with separate units to try and bring them on to some common ground.

Q Have you completed substantially your statement?

A I might say here that this, I think, might cover it. Through this conciliation service the Department of Labor can be helpful in industrial disputes, first through conciliation and mediation, by aiding the disputants to settle their difficulties by negotiation; secondly, by the commissioner of conciliation drawing on his knowledge of trade agreements in the same industry, developing a plan and using the same as a basis

for discussion at meetings arranged by the employers and employees; and, third, through the commissioner of conciliation, upon the request of both parties, drafting a plan or a suggested plan of settlement and submitting it as a recommendation.

Fourth, by devising methods of arbitration, when necessary, through disinterested parties or through parties selected by interests concerned, and a referee selected, generally from the outside, or named by some responsible government official.

Fifth, the commissioner sometimes is called upon to make independent investigations covering the matters in dispute, so that the commissioners may be in a position to advise employers and employees engaged in industrial controversy. Frequently these investigations the commissioners make are the basis of a settlement, providing the basis for a settlement, because you find very often that both parties are very unfamiliar with the actual conditions that exist in the plant affected by the dispute.

I think that covers it.

Q Now, let me ask you whether or not your Department has conducted or supervised the conduct of elections of employees by secret ballot?

A Yes, they have.

Q Can you tell the Board how many such elections were conducted and how many workers were involved?

A Just off the record, wouldn't it be well to put in this affidavit?

Q Just let us have the figures now, and I will ask you questions later which will cover that.

A All right.

In the course of its experience with elections in recent years, the Department has conducted or supervised the holding of nine elections upon direct request of one of the parties to a labor controversy—in some instances upon the request of the employer, and in all such instances upon the agreement of all parties concerned.

In twenty-nine cases the Department was requested to co-operate in the supervision of the elections by other governmental agencies, namely, the National Labor Board, the Petroleum Labor Board.

Q What was the experience of your Department in the holding of elections as to whether or not the holding of secret elections was conducive towards industrial peace, or industrial unrest?

A Well, we found that it was a very useful method in the bringing about of a better understanding between the contending interests, and we found it was very helpful, and when the results were announced and accepted it was very helpful in the negotiations that followed after the election was held and the proper bargaining agency had been determined.

Q Now, Mr. Kerwin, I assume you are familiar in a general way with numerous reports by governmental agencies appointed to investigate the causes of a general strike. I will ask you whether or not from your experience you have found it wiser to intervene in a dispute in an effort to avert a strike, rather than to investigate the cause as of a strike if a strike has taken place?

A Yes. We direct our efforts towards the prevention of strikes and lockouts, and during the years there has been a gradual change in the relativity of strikes and of threatened strikes. During the past nine months, for instance—and I checked up on this this morning—from the close of the last fiscal year, it stands, the percentages stand, 51 per cent strikes and lockouts and 49 per cent averted strikes and lockouts.

Q Now, let me ask you whether or not your service, as representative of the Labor Department cooperates in any way or coordinates in any way the work of the National Labor Relations Board?

A Yes, our service has cooperated with the National Labor Relations Board and with the Regional Boards of the National Labor Relations Board.

Q Will you tell the Board in what manner you have cooperated with it?

A Well, from the information received at the Department for assistance or the assignment of a commissioner of conciliation in a labor dispute, if the telegram or the letter or the telephonic conversation would seem to indicate that it is a matter that has to do with collective bargaining or unfair labor practices, we immediately advised them to get in touch with the nearest regional labor board and notify your people here in the office of the National Labor Relations Board.

Or, if our commissioners, on reaching the scene of a strike or a lockout, or the scene of a threatened strike, find that it comes under the purview of this Board, the National Labor Relations Board, we immediately turn it over to them.

Q In other words, you don't attempt to conciliate any condition which involves an unfair labor practice, as defined by the National Labor Relations Act?

A Only under these conditions, that frequently the regional labor board officials ask that our commissioners remain on the situation and assist them.

Q Now, do you have a record of how many matters your Department has referred to the National Labor Relations Board or any of its regions for attention?

A Yes, I have it somewhere. In 1934 we referred to the National Labor Relations Board 134 cases that were submitted to us.

Q How many during the last year?

A In 1935, 80 cases; and in this fiscal year I think some thirty or thirty-five cases.

Q Now, have there been instances when the National Labor Relations Board or any of its representatives have referred to your Department matters that called for conciliation and adjustment?

A Oh, yes, yes indeed.

Q And you have undertaken to adjust and conciliate, or to dispose of such controversies?

A Yes, sir.

Q In the best manner that you could?

A Yes, sir.

MR. WIRIN: That is all.

MR. CARMODY: Mr. Kerwin, is it true that there is a separate conciliation or mediation service to cover the railroad transportation industry?

THE WITNESS: Yes, sir.

MR. CARMODY: Your Department is not primarily concerned with the labor disputes on railroads?

THE WITNESS: No.

MR. CARMODY: Either for the train service or the shops of the railroad?

THE WITNESS: That is right.

MR. CARMODY: Now, could you give a rough estimate of the percentage, either in number of cases or men involved, who were in the manufacturing industries served by the Conciliation Bureau?

THE WITNESS: Well, I would say nine million.

MR. CARMODY: Nine millions of men who were covered by this service were engaged in manufacturing?

THE WITNESS: YES.

MR. CARMODY: In various parts of the United States?

THE WITNESS: Yes. I may be off a little bit there, but that is a rough estimate.

By MR. Wirin:

Q With respect to your description of how the commissioners of conciliation in an effort to adjust a particular industrial dispute and avert a strike, is it true that the conciliator approaches the workers through their representatives in the course of his efforts to get the employer and the workers together to avert a strike?

A Oh, yes.

Q In other words, then, is it true that it would be difficult and perhaps impossible for you to negotiate

a settlement unless the workers were represented by some person or organization that could be a party to the settlement? Is that correct?

A Oh, absolutely, because we have got to have some agency with which you can deal—some collective agency or some committee—because, if you didn't, you would have every individual in the plant with a separate grievance and you could never get anywhere.

MR. WIRIN: Thank you.

CHAIRMAN MADDEN: Thank you very much, Mr. Kerwin.

(Witness excused.)

MR. WIRIN: We would now like to have Professor Berman resume his testimony.

CHAIRMAN MADDEN: Very well.

Whereupon

EDWARD BERMAN

was recalled as a witness for and on behalf of the National Labor Relations Board and, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WIRIN:

Q I think we had completed, had we not, Professor Berman, the intervention of the President in the conductors and the trainmen threatened strike?

A That is right.

Q What about the Colorado strike of 1913 that Mr. Carmody asked about?

A I should say that the Colorado strike of 1913 and 1914 represents the most extensive single instance of executive intervention in a labor dispute.

In that instance, President Wilson not only carried on or attempted to get the parties to meet with him; he used all the influence he possessed to bring together the Colorado Fuel and Iron Company, which was the

most important company in connection with this issue, and the workers.

President Wilson wrote numerous letters to both parties, especially to the employers, and he carried on a concerted activity. I don't know the number of documents for which he is responsible, but I suspect it probably runs into the twenties—constantly attempting to get some sort of peaceful settlement.

An event took place in connection with that strike which has come down in labor history under the name of the Ludlow Massacre.

Q Just describe that briefly, won't you?

A In that particular instance, the Colorado National Guard set fire to a tent colony, the miners having been evicted from their houses by the company, and in this particular tent there had been dug what might appear to be something like a tornado cellar, in the hope that in the case of wild shooting, the women and the children might be put in there—and, as a matter of fact, during this particular event there were women and children and one or two old people hiding in that cellar, which was under the tent.

The tent was set fire to, and the result was the loss of life of practically all of those people. That gave rise to certain extensive attention on the part of the public, and so much concern on the part of the Federal Government with respect to this strike, that President Wilson sent in Federal troops.

I think it should be pointed out in this connection that those Federal troops which were under pretty close supervision, under the direct orders of the President—fairly direct, and perhaps more direct than any other instance of the use of Federal troops—succeeded in not only bringing peace, as far as prevent violence was concerned, into that strike area, but saw to it that none of the troops were to be used to import strike breakers from outside of the area.

I consider the activity of President Wilson in con-

nection with the Colorado strike as a very civilized and statesmanlike attempt to handle an issue which had become extraordinarily dangerous. Of course, he made no attempt—he did not succeed, that is—in preventing the strike in the first place; but he make every effort to settle it quickly, and his sending of troops, I think, did result in bringing about a more satisfactory condition in the area.

By that time the situation had given rise to such widespread attention, although the strike was practically dead.

The Colorado Fuel and Iron Company invited McKenzie King, who has since been Premier of Canada, to come in and investigate the situation, and, as a result, a certain plan of employer representation—or employee representation—which was one of the earliest of the widespread company union schemes, was put into effect.

MR. CARMODY: Wasn't it true that before McKenzie King, now Premier of Canada, was invited, John D. Rockefeller, Jr. himself made a personal visit and inspection of the area? Is that not true?

THE WITNESS: I can not speak definitely about that. I know he was immensely interested, and that the headquarters of Standard Oil, 26 Broadway, was picketed by women and children from the area. And I know McKenzie King, as well as John D. Rockefeller, were of the belief that something had to be done about it. I don't have any evidence at the moment of his actual visit to the plant.

CHAIRMAN MADDEN: Was recognition of the Mine Workers Union an important objective of this strike?

THE WITNESS: There had not been, I believe, at that section any really formal agreement with the unions, and recognition was one of the major issues.

CHAIRMAN MADDEN: Is it not true that the Colorado Fuel and Iron Company was a Rockefeller interest?

THE WITNESS: Yes.

CHAIRMAN MADDEN: And is it not also true that to a very large extent the conduct of that company as regards its relations with its workers was directed by the Rockefeller interests from New York?—So that the relations between the workers at the plant and the immediate managers was not the final relationship, so to speak, that affected the condition of work of the workers? Do you know about that?

THE WITNESS: I gathered the impression through reading the reports—the official reports of that strike—that Rockefeller put in the hands of Mr. Wellborn the control of the situation? That Mr. Wellborn kept Mr. Rockefeller informed of what was taking place.

I know that in many instances where reporters interviewed Mr. Rockefeller about it, the general answer made by him was that the matter was in the hands of the officials of the company in Colorado.

MR. CARMODY: Do you know whether or not the officials of the company in Colorado initiated the plan that finally came to be known as this representation plan?

THE WITNESS: I think without question that that plan was initiated through the direct personal influence of John D. Rockefeller, Jr. As a matter of fact, it was called the Rockefeller plan, and many thousands of copies of the plan were issued throughout the country at the time and could be obtained for some years thereafter from 26 Broadway.

BY MR. WIRIN:

Q In this connection, Professor Berman, let me call to your attention the characterization of the plan which Mr. Carmody and you have discussed by George P. West, who was designated by the 1915 Industrial Commission, the so-called Walsh Commission, in which he said, "Referring to the plan as having been sponsored by John D. Rockefeller himself," and I am quoting from the report now—"none of the principles of

effectual collective bargaining were embodied in the plan, but instead it is a hypocritical pretense of granting what is in reality withheld."

A Mr. West made that statement.

Q And in what connection did Mr. West make that statement? That is to say, was Mr. West instructed by the Industrial Commission to make an investigation of the causes of the Colorado strike?

A He was assigned the specific task of investigating the Colorado strike by the Commission which, I think, was set up in 1912 by an Act of Congress, and it was his official report to the Industrial Commission which contained that statement, which was later published in connection with the official report of the Commission.

MR. WIRIN: At this time we will ask the Board to take judicial notice of the official report of George P. West, being the report of the United States Commissioner of Industrial Relations on the Colorado strike.

BY MR. WIRIN:

Q I will show you what purports to be a summary and quotation from that report, and ask you if the summary is a fair one and the quotations are correct ones, according to the best of your opinion?

A I believe they are.

MR. WIRIN: We will offer this in evidence as a Board's exhibit.

CHAIRMAN MADDEN: It will be admitted.

(The paper so referred to was received in evidence and marked as Board's Exhibit No. 24, Wheeling Steel Corporation; Board's Exhibit No. 67, Jones & Laughlin Steel Corporation; and Board's Exhibit No. 12, Crucible Steel Company of America.)

BY MR. WIRIN:

Q Now, referring to Mr. West's and the Commission's finding concerning the causes of that strike, will

you state briefly what Mr. West listed as the primary causes of the strike?

A This is a direct quotation from Mr. West:

"The struggle in Colorado was primarily a struggle against arbitrary power, in which the question of wages was secondary, as an immediate issue."

Q What does the reference to "arbitrary power" mean? "Arbitrary power" of whom?

A Of the employer, of the company.

Q I will ask you whether or not summary discharges by the company, the black list, armed guards, and the use of spies were part of the grievances of the employees?

A They were.

Q And part of the causes of the strike?

A Yes.

Q I think this has been covered, but to make sure that it was, is it true that the major demand of the striking miners was for the recognition of the Union?

A It was.

Q I call to your attention the following quotation from Mr. West's report:

"The situation in Colorado approached a condition of absolute prostration of government and of actual revolution"—

Q And I ask you whether or not the finding of Mr. West in that connection is supposed by your own investigation of the matter from reports that you have read?

A I should say that if by a state of revolution you mean a state in which two important parties of armed camps are fighting each other, in which the ordinary processes of law are not in operation, in which violence is a very common occurrence, that that is true. That would not be my formal definition of "revolution," but I think that is one aspect of most revolutions.

Q Now, you have mentioned the report of the In-

dustrial Commission, commonly designated as the Walsh Commission.

MR. CARMODY: Are you leaving the Colorado situation?

MR. WIRIN: I am for the time being.

MR. CARMODY: While we are on the subject I would like to ask in what work these men were engaged who were on strike?

THE WITNESS: In mining.

MR. CARMODY: Were the men in the steel mills on strike at that time?

THE WITNESS: The strike, before it was over, involved some steel workers. I think essentially, however, it involved the miners employed by the Colorado Fuel and Iron Company.

MR. CARMODY: And what were they mining?

THE WITNESS: They were mining coal.

BY MR. WIRIN:

Q Can you tell us how long the strike lasted and how many workers were involved, approximately?

A This Colorado strike started in 1913—I do not recall the exact length of time for which it was carried on—but I should say it was about a year or somewhat less; and it involved all of the employees, especially the miners, that is, of the Colorado Fuel and Iron Company.

Some other companies became involved later on. I do not have immediately available a statement of the number who were involved. I should say probably no more than ten or fifteen thousand workers were involved.

MR. CARMODY: Do you know whether the legality of the United Staes Government, of the President, has been questioned with respect to sending Federal troops into a state where the operation is a mining operation?

THE WITNESS: Perhaps I could answer that better, Mr. Carmody, if I express what I believe to be the facts about the conditions under which Federal troops may be sent in.

MR. CARMODY: I don't know that we are prepared at this moment to go into that—and we will just pass the question.

THE WITNESS: In this particular instance there is no general case of which I know, in which the fact that a coal strike or something of that kind was involved, and which was offered as an objection to the use of Federal troops.

MR. CARMODY: There was no injunction against the entrance of these troops into the state?

THE WITNESS: No, and there were no direct court processes involved.

BY MR. WIRIN:

Q To your knowledge, was the authority of the Federal government to order troops questioned?—And, if so, what became of those questions?

A It was not questioned and, on the contrary, the Federal troops were sent in to a certain extent because of the request of officials in the State of Colorado.

Q Now, leaving the Colorado strike and returning to the report of the Industrial Commission, under an Act of Congress of 1912, will you tell us briefly what was the nature of the Commission, by whom it was appointed, and under what authority of law?

A Congress passed an Act on August 23rd, 1912 which set up the United States Commission on Industrial Relations. It was given the task of inquiring into the Federal labor situation in the country, including agriculture, and especially with respect to the situation regarding relations between labor and corporate organizations, business organizations or corporations; the effect of industrial conditions on public welfare; the extent and results of methods of collective bargaining; methods for avoiding or adjusting labor disputes; and to discover the underlying causes of dissatisfaction in the industrial situation generally.

The Chairman of the Board was Frank P. Walsh, and the Board was made up of representatives who

were in general rather well known throughout the country for their interest in industrial problems.

Q Was Professor John R. Commons a member of the Commission?

A Professor Commons was a member, and also Mr. Harris Weinstock of California, who was at that time or later a Commissioner of Labor in that state; Mr. Austin B. Garretson, who I believe at that time was a member of one of the railway unions, was also a member.

MR. CARMODY: The Order of Railway Conductors.

BY MR. WIRIN:

Q Who was the Director of Research and Investigation?

A That was Basil Manly.

Q Did the Commission hold public hearings through the country?

A It did. It examined over seven hundred witnesses, and its hearings actually took place on as many as 184 days.

Q Lasting for a period of about six months?

A About that.

Q Now, did the Commission make a report of the hearings and of its findings and recommendations?

A The Commission published, I believe, twelve volumes—all but one volume of which, I think, was devoted to a report of the evidence at the hearings.

There was no unanimous report. A number of—I should say two—reports were made. One report was made with Frank Walsh, the Chairman, writing the report, and a number of persons, three others, agreeing with him in every detail—although some of them added additional minor recommendations of their own in separate accompanying reports.

The other major report was written by Professor John R. Commons, and a number of the members of the Commission agreed with him; but the same thing was true there.

Even though there was not unanimous report, and even though there was considerable difference of opinion among the various members of the Commission, the members of the Commission were apparently all unanimous. I gather that from reading the reports and findings, as to which there was substantial agreement.

They were unanimous about the belief in collective bargaining and the attempt to prevent the formation of trade unions, and the arbitrary power exercised in industry as a cause of industrial disturbance and industrial disputes.

Q Now, I show you a document which purports to be a summary and the quotation from the report to which you have just referred, and ask you if that is a fair summary and if the quotations are correct, to the best of your knowledge?

A I believe it is.

MR. WIRIN: I will ask the Board to take judicial notice of the hearings and the finding and recommendations in the documents known as "Industrial Relations, Finan Report and Testimony submitted to Congress by the Commission on Industrial Relations, created by the Act of Congress of August 23, 1912," being an official publication of the Government Printing Office dated 1916; and we ask that this summary and the quotation be admitted in evidence as an exhibit.

CHAIRMAN MADDEN: Very well.

(Said paper so referred to was received in evidence and marked as Board's Exhibit No. 25, Wheeling Steel Corporation; Board's Exhibit No. 68, Jones & Laughlin Steel Corporation; and Board's Exhibit No. 13, Crucible Steel Company of America.)

BY MR. WIRIN:

Q Now, Professor Berman, did the Commission make any recommendations as the result of its elab-

orate investigation, for Federal action, in order to avert some of the disastrous strikes which it had considered?

A Yes, the Commission first pointed out that one of the major causes, perhaps the most important causes of industrial unrest, was the denial of the right of organization. It went into a considerable discussion of the significance of the fight for collective bargaining, and of the existence of any quality in bargaining power among employers and employees.

The Commission came to the conclusion that, as the result of its investigation, it would appear—and this is a quotation—"That every means should be used to extend and strengthen organization throughout the entire industrial field."

MR. WIRIN: I would like at this time to call the attention of the Board to the recommendations of the Commission, which appear on page 6 of the summary that has been offered in evidence, and which provide —and I quote—

"The enactment of statutes specifically protecting this right"—

And this is referring to the right of collective bargaining—

"And prohibiting the discharge of any person because of his membership in a labor organization."

"And, further, referring to Section 4 of the recommendations—

"That the Federal Trade Commission be specifically empowered and directed by Congress, in determining unfair methods of competition, to take into account and especially investigate the unfair treatment of labor in all respects, with particular reference to the following points:

"(a) Refusal to permit employees to become members of labor organizations.

"(b) Refusal to meet or confer with the authorized representatives of employees."

In other words, the Commission recommended that

Congress enact legislation which would authorize the Federal Trade Commission to take action with respect to certain unfair labor practices defined by the Congress.

BY MR. WIRIN:

Q Now, with respect to the Coronado coal strike of the Bach-Denman mine in Arkansas, what action did the Federal Government take?

A It sent in troops, and the Federal Court issued an injunction against the strikers, and many United States Deputy Marshals were appointed to enforce that injunction.

Q As the result of that situation, were the two now famous Coronado coal company cases against the United Mine Workers, which went to the Supreme Court? Did that situation result in those cases?

A That was the origin of those cases.

Q Now, in 1916 was there a threatened railway strike?—And, if so, what Federal action was taken to avert it?

A The railway unions had felt for some time that their wages were unsatisfactory, and they presented demands to the employers. In this particular case the situation was the reverse of what it had been previously. You will recall that in the threatened strike of conductors and trainmen on the Eastern Railways in 1913, the employers wanted settlement by means of arbitration, but demanded a change in the arbitration law, because the employers had, in that other instance, felt that arbitration had not been successful previously under the Erdman Act.

MR. CARMODY: When you say it had not been successful, you mean it was not favorable to them?

THE WITNESS: They felt that it was not successful, which I suppose meant favorable to them.

In this particular instance the Railway Unions had believed themselves to have been the recipients of a number of unjust arbitration decisions, and though they

were very willing to engage in negotiations with the employers, and such negotiations were conducted over a considerable period of time, they refused to submit the issue to arbitration.

The dispute settled down to a dispute over the eight-hour day. On the railroads that, as a matter of fact, was not purely an eight-hour issue. The basic working day up to that time had been ten hours and over-time commenced for work done after ten hours in one day.

The demand for an eight-hour day was thus really a demand for a basic eight-hour day, and the payment of over-time for work done in excess of eight hours. The issue thus was a mix issue as to the length of the working day, together with a rather hidden issue over increase in wages involved in the reduction of the basic working day.

BY MR. WIRIN:

Q Let me ask you whether or not ultimately President Wilson personally appeared before Congress and urged the enactment of legislation which would legalize the basic eight-hour day and which legislation is now known as the Adamson Act?

A He did that after it was made perfectly clear that the employers would make no concessions except to arbitrate, and the employers would not arbitrate without some concessions being made in advance. He went before Congress and averted the strike, which was due to take place on Labor Day which, I think, was September 4, 1916, and he urged Congress to pass an Act which essentially compromised the issues.

Q And was that the Act upheld later by the United States Supreme Court in the case of Wilson versus New?

A It was.

Q Would you consider that an example of joint intervention by the President and Congress in an effort to avert a threatened national railway strike?

A Yes—joint intervention by Congress with the President, after the President's efforts had proved unsuccessful by themselves.

Q Now, with the advent of the World War, did Presidential intervention increase or decrease in frequency and extent?

A It greatly increased.

Q And what was the first form of Federal or Presidential intervention?

A The President appointed a Mediation Commission, the immediate occasion being a number of strikes which had given rise to disputes and disorders in Arizona, and that Commission also investigated various other such situations and offered suggestions for settlement.

Q What kind of strikes were these?

A One of them was a strike in the metal mines in Arizona. Then there were strikes in Southern California which had become rather important.

Q Were any of them in connection with what was commonly designated as instrumentalities of commerce, like railways or ships?

A None of the mediation of the Commission, as I recall, had to do with instrumentalities of interstate commerce.

Q Who were the members of that Commission?

A William B. Wilson was a member.

Q Was that the Secretary of Labor?

A Yes, the Secretary of Labor at that time.

Colonel J. L. Spangler, Verner Z. Reed, J. H. Walker, E. P. Marsh—and the Secretary of the Commission was Professor Felix Frankfurter.

Q Did the Commission succeed in settling some of those disputes?

A It did.

Q Now, were there any labor disputes on the railways in 1913 that called for Presidential intervention?

A Yes, there were a considerable number. The

strikes threatened were averted by the appointment of a Railroad Wage Commission. At the end of that year Secretary of the Treasury McAdoo became Director General of the Railways, in that year, and he appointed that railroad commission.

Thereafter other additional boards and commissions were set up following the work of the Railroad Wage Commission. As the result of the activities of these various boards; disputes on the railroads were prevented from breaking into open hostility during the War.

Q Was there a set-up during the War known as the National Railway Labor Board, and was then Ex-President and thereafter Chief Justice Howard Taft one of the co-chairmen of that Board?

A He was.

Q And was Frank P. Walsh one of the co-chairmen?

A He was.

Q And that was the same Frank P. Walsh who was Chairman of the 1912-1915 Industrial Commission?

A That is right.

Q I will ask you skip any further reference to the activities of the National War Labor Board, Professor Berman, because we intend to have Basil Manly cover that. Did Basil Manly become one of the co-chairmen of that Board?

A Later on, I think, when Walsh resigned.

Q Now, with respect to the 1919 shopmen's strike, what Federal activity was there?

A The Attorney General secured Federal injunctions restraining the conducting of the strike. The President attempted through his personal efforts to settle the dispute. The Director General of the Railways, then Walker D. Hines, was also interested and made some attempt to settle the dispute.

Q Now, in 1919 there was the great steel strike. I will ask you to avoid any extensive reference to that,

because we shall have further testimony on that subject. You have already testified that Federal troops were summoned to Gary, Indiana, during that strike?

A Yes.

Q Now, during the bituminous coal strike of 1919—

A (interposing) May I interrupt for just a moment, Mr. Wirin? I think it would be important to the general testimony I am offering to point out that President Wilson's efforts to induce Elbert Gary, Chairman of the Board of the United States Steel Corporation, to meet with representatives of the union, failed.

Q Do you have an opinion as to whether or not the refusal of Judge Gary to meet with the workers was one of the causes of the strike?

A I am positive that that was one of the causes of the strike.

Q Now, with respect to the bituminous coal strike of 1919, what Federal intervention was there?

A The major intervention involved the issuance of an injunction under the Lever Act, at the request of Attorney General Palmer—an injunction which was somewhat unusual, because the strike was already ordered and had commenced in certain places—and the officers of the United Mine Workers of America were ordered to rescind the strike order.

Federal troops were also sent to various coal mining regions.

Q Will you mention the states?

A West Virginia, Pennsylvania, Tennessee, Wyoming, Utah, New Mexico, Oklahoma, Kansas, and the State of Washington.

Q Thereafter was a bituminous coal commission appointed by the President?

A It was. It was as the result of the appointment of that commission that the strike was called off, and the commission later handed down a decision.

MR. CARMODY: May I ask about a point there?

Do you know how much it cost for the commission to make that report?

THE WITNESS: I am not acquainted with the cost of the report. I wonder if I may suggest, Mr. Carmody, whether you don't have in mind the very voluminous report of the later coal commission?

MR. CARMODY: Yes, I did have that in mind. That has not been touched upon yet?

THE WITNESS: No, it has not. I know the cost went up into millions of dollars.

BY MR. WIRIN:

Q Now, did President Wilson call an industrial conference at about that time?

A In the fall of 1919, almost at about the same time when the steel strike was going on, the President called an industrial conference together. That conference was constituted according to the interests of the parties. That is, it was essentially bipartite in character, with a chairman who was supposed to represent the public interest.

On that body there were represented an equal number of employees or trade union representatives, and employer representatives. The outstanding member amongst the workers, the worker representatives, was Samuel Gompers. The outstanding member, as I recall it, on the other side was John D. Rockefeller, Jr., and there were a number of other important persons.

Q Was Elbert H. Gary a member?

A I think Mr. Gary was a member of the conference.

The conference resulted in a deadlock and a failure, because when it came to the making of a report and the expressing of conclusions in definite terms, the employers were willing to make a statement about the desirability of collective bargaining and the employee representatives were willing to approve that statement; but the employers insisted upon the inclusion of a clause, to the effect that the representatives for

the purposes of collective bargaining must be confined to employees of the company—and, of course, the trade unions refused to accept that, and the conference came to and end.

Immediately thereafter President Wilson constituted another conference which became known officially as the President's Industrial Conference. It assumed its work on December 1, 1919 and rendered a report on March 6, 1920.

That conference, contrary to the first one, this time did not represent any particular persons symbolizing the interests of either party to the dispute. It was supposed to be a general public conference.

Q Can you tell us who some of the members of that conference were?

A Secretary of Labor William B. Wilson was Chairman. Herbert Hoover was Vice Chairman.

Q Is that the now Ex-President Herbert Hoover?

A Yes. And among other important members were Stanley King who, I think, is now President of Amherst; Samuel W. McCall, a former Governor of Massachusetts and Representative of the State in Congress for many years; Julius Rosenwald, the head of Sears-Roebuck; Oscar S. Straus, who I believe was the first Secretary of Commerce and Labor under Theodore Roosevelt's Administration; William O. Thompson, who at the time I believe was President of Ohio State University; Frank W. Taussig, an authority on these questions; George W. Wickersham, very prominent as a prosecuting official for the Federal Government, I think, and a member of the Cabinet under at least one Administration.

Q Is he the same Wickersham who was formerly Attorney General of the United States?

A That is the one, I think.

Q And President of the American Bar Association?

A Yes, and Chairman of the Commission which investigated the prohibition problem some years ago.

Q Appointed by then President Hoover?

A I believe so. And Owen D. Young was also a member of that conference.

One of its secretaries was Henry R. Seager, Professor of Economics at Columbia, now deceased, and who was one of the outstanding economists in the country.

Q I will ask you whether or not that conference succeeded in arriving at a report and recommendations?

A The conference published a report, a copy of which I have here, of 30 pages in length. It recommended various types of adjustment machinery, the only compulsory aspect of which had to do with investigations or boards of inquiry to be established in case voluntary settlement did not take place.

There is one excerpt from the conference report which I think should be quoted verbatim—

> "Representatives must be selected by the employees with absolute freedom. In order to prevent suspicion on any side, selection should be by secret ballot. There must be equal freedom of expression thereafter. All employees must feel absolutely convinced that the management will not discriminate against them in any way because of any activities in connection with shop committees."

Q Was the conference, including the persons whom you have named, unanimous in arriving at all of its conclusions?

A Yes.

Q Were there any dissents of any kind with respect to any portion of the conclusions?

A I think so.

Q Will you check that to make certain?

A Yes. There were no dissents.

Q And you find that there were no dissents, after an examination of the official publication?

A Yes.

Might I add, Mr. Wirin, that I think I have some special competence to speak on that conference, because it constituted the result of some six months study in 1920 and 1921, as a separate subject.

Q Then let me ask you whether or not this paper which I hand to you contains a fair summary and correct quotations from the report of that conference?

I believe it does.

MR. WIRIN: We will ask the Board to take judicial notice of the entire contents of the report, which is an official report of a governmental agency, and is known as:

"Report of Industrial Conference called by the President," and this is dated March 6, 1920.

The reason we can not offer this Industrial Report of 1920 into the record is because it is no longer in publication, and the copy which we have here is one of the few rare copies extant. And I think that is an additional reason why the Board should take judicial notice of this rather than offer into evidence a copy which does not belong to us. It belongs to the Library of Congress.

However, we would like to offer into evidence the summary and the quotations which Professor Berman has identified as a Board exhibit.

CHAIRMAN MADDEN: It may be admitted.

(The paper so referred to was received in evidence and marked as Board's Exhibit No. 26, Wheeling Steel Corporation; Board's Exhibit No. 69, Jones & Laughlin Steel Corporation; and Board's Exhibit No. 14, Crucible Steel Company of America.)

MR. WIRIN: I would like to call the attention of the Board that in the Exhibit which has just been offered, there is a verbatim quotation of all the recommendations of the Commission, so that the record dis-

closes not merely portions of the recommendations but all of them, and that the Commission was unanimous in recommending the appointment of the National Boards which in turn were to have regional boards, with authority to compulsorily investigate disputes and their causes and to adjust disputes where parties consented to such adjustment.

BY MR. WIRIN:

Q Now, with respect to the anthracite wage dispute of 1920, what action was taken by any of the agencies of the Federal government?

A The President got in touch with the contestants and secured an agreement on their part to submit the case to arbitration by a commission called the United States Anthracite Coal Commission, which he himself appointed.

Q Is that the Commission to which Mr. Carmody had reference?

A No; that is not the commission to which he had reference.

MR. CARMODY: There have been many commissions in the coal industry, both anthracite and bituminous.

BY MR. WIRIN:

Q Now, Professor Berman, you have outlined the occasions of the dispatch of Federal troops into areas. What instances were there in 1919 and 1920? Just giving us the approximate date?

A Of course, there was the dispatch of Federal troops in connection with the steel strike. Federal troops were used in connection with some of the later troubles in 1920.

Q That was with respect to West Virginia coal?

A The West Virginia situation became most important, and the use of Federal troops was most important in 1921. President Harding sent in the troops then.

Federal troops were used in connection with the

general strike in Seattle; the strike of street car workers in Denver; the copper strike in Butte; and the coal strike in West Virginia.

Q Were any of those instances or situations involving the so-called instrumentalities of commerce?

A None of them were.

Q Did President Harding intervene in labor disputes?

A President Harding intervened in a number of disputes.

The first instance was in connection with disturbances in the bituminous coal fields of West Virginia, in 1921, when he sent in Federal troops. As the result of the sending in of Federal troops, the disorder was stopped. That was the time when, as you will recall, there were actually armed marchers of hundreds of strikers to various communities, bent upon preventing operation of the mines. The use of West Virginia police and the National Guard apparently aggravated the situation, and the Federal troops were sent in by President Harding.

Q With respect to the West Virginia situation, I will call to your attention a quotation from your book, "Labor Disputes and the President," which reads as follows:

> "It is not intended to leave the impression that real industrial peace exists in West Virginia. As long as the operators continue their bitter fight against the unions, and the United Mine Workers continue their attempts to organize, hostilities of a violent nature are likely to arise without great provocation."

When did you write that?

A 1923.

Q I will ask you whether or not you still subscribe to the opinion which you expressed in your book in 1923?

A I do. I think the situation in West Virginia is better, but without question that in general is true. Troops do not settle disputes.

Q Now, with respect to the coal strike of 1922, is that the coal strike that Mr. Carmody had reference to?

A Yes.

Q And what did the President do, if anything, in that connection?

A In that connection the President attempted to bring about a conference of the two sides. First the attempts were made by his Secretary of Labor, Davis, and then he called a conference himself and held it in the White House. He threatened to call out troops if a settlement were not effected, and then he asked Congress for a law providing for the appointment of a Commission of Investigation. Such a law was passed and John Hays Hammond was appointed as the Chairman.

Q Now, with respect to the railway shopmen's strike of 1922, was Federal intervention resorted to?

A That is one of the, I think, most extensive examples of intervention by President Harding.

MR. CARMODY: Are you leaving that coal Commission?

MR. WIRIN: Yes.

MR. CARMODY: Was Thomas Marshall, who had been Vice President of the United States, a member of that Commission?

THE WITNESS: I think in a moment I can check on that. I don't remember offhand.

MR. CARMODY: All right.

THE WITNESS: I am sorry; I can not say about that.

MR. CARMODY: Do you know whether or not about that time, or just previously to the appointment of this Commission, the passage of this law, United States Senators had themselves made a personal investigation of this dispute in the field?

THE WITNESS: Yes.

MR. CARMODY: And had made a report to the Senate with respect to their own observations?

THE WITNESS: Yes.

BY MR. WIRIN:

Q Now, with respect to the shopmen's strike, let us find out—how many workers were involved?

A There were involved in the actual strike order and actually went out on strike—July 1, was it not, 1922?—400,000 railway shopmen. The strike lasted for a long time. On some of the roads, perhaps on most of the roads, a settlement had been secured whereby the strikers went back by November 1; but as late as March, 1935, 150,000 shopmen were still out, and as late as August—a year and a month later—the strike was still being carried on. I think it would be correct to say that this strike still remains unsettled on some railroads, because the workers were never reemployed.

Q Let me ask you whether or not prior to the strike one of the demands by the strikers, or by the workers, was a conference with the railway operators, which conference was at first denied?

A That is true.

Q State whether or not in the settlement of the dispute the question of discrimination by the railways with respect to the re-hiring of striking workers was in issue?

A Before the strike was two weeks old, that became the major issue. The strikers apparently by the second week of July realized that their cause was lost, and then they sought to get reinstatement of the strikers without discrimination; and the employers issued statements to the effect that those people who had, as they put it, unlawfully left there on July 1, must take their place in being assigned to jobs after the people who had been employed to take their places—and that was involved in practically all of the President's attempts in settling that issue.

Q Is that an example of where a strike or where

a dispute arises out of certain causes and then results in a situation where the question of unfair labor practices becomes the paramount issue?

A I think so, unquestionably. The issue finally became one of whether or not they would re-hire the strikers, and that issue came to a head in July.

MR. CARMODY: These men were not trained service men, but actually shop men who worked in the railroad shops?

THE WITNESS: That is true.

MR. SMITH: In the several references which you have made to unfair labor practices, Mr. Wirin, you are using that term in the technical sense as employed in the Act, are you not?

MR. WIRIN: Yes.

BY MR. WIRIN:

Q In that offense, are you familiar with the term, "Unfair labor relations," in the National Labor Relations Act?

A Yes, I am.

Q You have mentioned the issuance of injunction. Were they issued upon application of the United States Government?

A Upon direct application of Attorney General Daugherty.

Q In behalf of the government?

A In behalf of the government of the United States.

Q Was this in a Federal Court?

A In a Federal Court, and supposed to be proceeding principally under the Sherman Act; but there were other laws involved.

Q Were persons deputized as deputy marshals for the purpose of enforcing the order of the Federal Court?

A I should say thousands were employed in that capacity?

Q Was there a threatened strike in the bituminous coal industry in 1924?

A Yes.

Q And what are the facts with respect to that strike?

A No; may I correct that, Mr. Wirin? The agreement between the bituminous coal operators and the miners expired early in 1924. The miners asked for a conference to negotiate a new agreement. Many of the operators had come to the conclusion that they did not want to have any further relations with the union, and they refused to meet the workers in conference.

Thereupon the Secretary of Commerce, Hoover, held a conference with President Coolidge, as the result of which conference a statement was issued at the White House to the effect that the President believed that the two parties should get together.

Thereafter Mr. Hoover issued letters and urged personally upon the various coal operators that they meet with the miners and the union officials, and as a result of those activities a conference was held at Jacksonville from which came the so-called Jacksonville Agreement. That agreement was reached some time early in 1924 and was to be in effect for three years.

MR. CARMODY: Even that covered only part of the bituminous coal industry? It did not cover all of West Virginia or Alabama or certain other important coal fields?

THE WITNESS: That agreement covered only those areas which had previously had agreements, and not all of them. Some of the operators in those areas refused to meet with them.

BY MR. WIRIN:

Q You mentioned Herbert Hoover.

A Herbert Hoover, Secretary of Commerce.

Q And thereafter President?

A Yes.

MR. WIRIN: Professor Berman's testimony ought to last about ten or fifteen minutes more. Should we proceed and conclude before recess, or take a recess, Mr. Chairman?

CHAIRMAN MADDEN: Let us recess now, and we will resume at 2:00 o'clock.

(Whereupon, at 1:00 o'clock p. m., the hearing was recessed until 2:00 o'clock p.m. this day.)

AFTERNOON SESSION

THE CHAIRMAN: You may proceed.

BY MR. WIRIN:

Q Professor Berman, in discussing the nature of the federal intervention in the bituminous threatened coal strike of 1924, in the course of which you refer to certain acts by the then Secretary of Commerce Herbert Hoover—

A 1923, I think.

Q 1923-24.

A Yes.

Q Will you state whether the action taken by Mr. Hoover was under orders of President Harding?

A I think Mr. Hoover took some initiative on his own to begin with, he actually consulted with President Coolidge, and this was in 1923, and statements were issued to the press from the White House and it was understood that President Coolidge was behind the message sent by Secretary Hoover to the operators urging them to meet with the miners.

Q Now, did President Coolidge intervene in the anthracite coal strike of 1925?

A There was no intervention designed to avert or end the strike, nor was there any evidence of the sending of troops or of seeking for an injunction. The only evidence of a direct interest in this dispute on the part of President Coolidge is to be found in his message to Congress of December 8, 1925. I should like to read part of one paragraph from that message:

He has referred to the fact that there is in existence an anthracite strike which began on September 1, 1925. It actually lasted until February 17th, and referring to that he pointed out that—

"The National Government had no authority to deal with the matter."

That appeared to be his opinion of it, and he made this particular statement:

"The Federal Government has permitted itself to remain so powerless that its natural attitude must be humble supplication. Authority should be lodged with the President and the Departments of Commerce and Labor, giving them power to deal with an emergency. They should be able to appoint temporary boards with authority to call for witnesses and documents, conciliate differences, encourage arbitration, and in case of threatened scarcity, exercise control over distribution."

That is the only evidence I know of, of anything he said in connection with the strike.

Q Now, I will ask you, Professor Berman, whether as a result of your study of labor relations and federal intervention, you have arrived at any opinion as to the inevitability of federal intervention in labor disputes.

A I believe that the history of such intervention since 1894 should demonstrate rather conclusively that whenever a major dispute takes place, when it threatens to cause hardship and suffering, there has, as a rule, been some sort of federal intervention. I think it pertinent in that connection to point out that when that intervention was first made by President Cleveland at the time of the Pullman strike in 1894, and especially by President Roosevelt during the anthracite coal strike in 1902, there existed no precedents upon which to base large scale intervention by federal authorities in labor disputes, but despite the precedent, and despite the absence of any direct injunctions from Congress in the form of legislation, or despite the absence of any specific constitutional mention of these issues, President Cleveland, and especially President Roosevelt felt themselves compelled by the circumstances to intervene.

Q Please state whether or not in your opinion some of the forms of intervention which you have been describing this morning have been unplanned, and hastily devised—that is, referring particularly to the kinds of intervention that you consider?

A I should say that if by being planned, you would mean the existence of a technique with which people concerned were acquainted with in advance and which they were ready to use in a given moment, if that is what you mean, there has never been any planned intervention by executive agencies in federal disputes.

If you mean by planned intervention the fact that the Sherman Act empowers the Attorney General of the United States to seek injunctions, that various federal laws have been used for a similar purpose, that in many cases employers themselves have gone into federal courts and obtained injunctions. That is part of our general procedure, and it is known.

If that is planning, there has been planned intervention.

Q What I have reference to is this; and for the purpose of clarifying the question, have there been instances when the federal government has intervened, and for example, in the sending of troops, without any effort at first to ascertain the causes of the strike, or an effort to eliminate the causes of a particular strike?

A I think that with the exception of the Colorado strike of 1913-14, there is no evidence of the sending of troops with which I am acquainted, in which an attempt was made to ascertain the causes of the strike and investigate the situation before hand.

Q Have there been strike situations where efforts were made by the federal government to ascertain the causes of the strike after the breaking out of the strike?

A There have been such efforts, as in the Pullman strike.

Q Manifestly those efforts were of no avail in so far as preventing the particular strike which was being investigated after the strike took place.

A I would agree with that, and I would go further and say that since—when the strike was already ended, the recommendations were made, and public interest ceased to be of much concern with this issue, and the recommendations in most cases were without effect thereafter in preventing future strikes.

Q Now, let me ask you, do you have a reference handy to a report by a governmental commission concerning the hasty nature of certain forms of federal intervention?

A The United States Coal Commission, which was appointed in 1922, made an extensive report and one of the things it said, after referring to the fact that on four different occasions between 1917 and 1922, coal strikes had occurred which produced a critical condition, this remark was made:

> "The history of these experiments in federal intervention is a history, not of deliberate venture of public control, but of hastily improvised measures to meet the crisis.
>
> "On each occasion the need of the machinery was largely dictated by the powers conferred upon the Executive by the Constitution, and by the statutes."

I would say that the principal characterization of federal intervention in labor disputes is that they are unplanned and done in a hurry.

Q Are you referring to matters prior to the enactment of the National Labor Relations Act?

A True.

Q Let me ask you whether or not, in your opinion, some of the measures described by you and by the Coal Commission as hastily devised, by the federal government, have tended to stimulate and encourage labor unrest, and discontent?

A I think that there are many instances in connection with these cases, which I have discussed today, but a great many more could be found in the history

of labor disputes in this country, which would demonstrate conclusively that as a general rule the issuance of injunctions, and the deputizing of assistant marshals, the sending of the troops, has had the effect, not of settling disputes or of allaying the causes of the disturbances, but of aggravating them.

I believe that to be true, because the issuance of injunctions alone, for instance, has given rise to a very aggressive and determined disrespect on the part of many trade unions and workers for the process of the courts, and it has given rise to specific orders to violate injunctions and to go to jail rather than obey them, and the use of marshals, accompanied, as it has been frequently, by the development of violence rather than the prevention of violence, and by the development of looting, some of which the marshals themselves connived, and the use of troops which in many cases was made under a fairly sensible procedure—I have mentioned some of those—in many other cases the troops aggravated the situation and antagonized the strikers involved so as to produce a belief that the government, or belief on the part of the workers and working classes in this country, that the government was working against them, and the use of the court injunction, especially, in my opinion, has generally convinced many workers that not only could they not get justice at the hands of the courts, but that judicial processes would be used to prevent them from carrying on their legitimate activities.

Q When you say the use of injunctions, are you referring to injunctions issued by federal courts?

A I am referring to the use of injunctions issued by the federal courts, but that also holds true for state courts.

Q By the way, with respect to figures as to injunctions, something over five hundred, does that apply to injunctions given by federal courts?

A That is only federal courts. That was the count

up through May 1, or prior to May 1, 1931. There were 508 cases of which he had found record, in which injunctions had been issued in federal courts against labor, and many other attempts to get injunctions.

Q Let me ask you whether since the passage of the Norris-LaGuardia Act, the tendency as to the creation of industrial unrest and hostility by workers to the Federal courts has continued, or what the facts are with respect to that?

A I don't think that the evidence is voluminous enough to enable one to state very definitely his conclusions, but I made some study of that, and I do feel that the number of injunctions in the first place issued by federal courts has greatly diminished, and a good deal of this belief that the federal courts would be used to fight against labor, on the side of employers, has been allayed.

Q And now let me ask you whether or not, in your opinion, the intervention by the Federal Government prior to the strike, for the purpose of averting the strike, is preferable to the intervention by the Federal Government after a strike, for the purpose of investigating its causes?

A I should say that the answer very clearly is that the efforts of the Federal Government to avert a strike are better, more successful, and more successful not only because strikes actually have been prevented by the efforts of the President and other officials, but also better because all of the undesirable things that accompany strikes have been prevented, when such efforts have met with success.

Q Now, do you have an opinion as to whether or not discrimination by employers against workers for labor activities constitutes a cause of industrial disputes and of strikes?

A I should say that in most of these disputes that I have discussed, that has been the direct grievance. Sometimes it has been the particular activity which has

occasioned a strike vote and has lead to a strike being called earlier than otherwise would have been done.

I should say that as a general rule such discrimination is a major cause o findustrial unrest, and of strikes.

Q Are you familiar with Section 7 of the National Labor Relations Act?

A I have a copy here somewhere.

Q And Section 8?

A Yes.

Q Including the various subdivisions of Section 8?

A Yes.

Q I will ask you whether or not in your opinion the unfair labor practices which are listed there—I will withdraw that question—

I will ask you whether or not in your opinion the practices by employers which are defined in those sections as unfair, in your opinion have led and do lead to labor unrest and to strikes?

A I am positive of it.

Q In your opinion, would the elimination of the practices which are defined by the act as unfair practices, would the elimination of those practices tend to avert the strikes which are caused by those practices?

A I think that it would be fair to say that there are usually other causes of strikes than those, that is, even though the discharge of a worker, or what is regarded here as an unfair practice in another respect—but there are frequently other causes—but I should say that this is one of the most important, and the elimination of that is a cause that would tend to reduce the number of strikes.

Q I call your attention particularly to the provisions of Section 1 of the National Labor Relations Act, which contained the finds and declarations of policy by the Congress of the United States.

Section 1 begins to read as follows; and I quote:

"The denial by employers of the right of em-

ployees to organize, and the refusal by employers to accept the procedure of collective bargaining, lead to strikes and other forms of industrial strife or unrest"—

and ask you whether or not out of your experience and the study of labor relations, you have found that statement to be true or untrue?

A I think it is true.

Q I will ask you whether or not—I will withdraw that question:

Do you have an opinion as to the concensus of opinion by students of labor relations on the relationship of the right of employees, the relationship of the denial of employees to organize, and strikes?

A I would like to put the matter somewhat differently and say that I know of no important or even unimportant work written by a person who would be called an economist in this country, which does not assert and argue for collective bargaining, and for trade unionism, and independent trade unionism as a means of carrying out collective bargaining.

Q But going a step further, this provision of the Act which I have just read to you, also stated that the denial of the right to organize causes strikes:

Now, what is the concensus of opinion, if there is such, among experts in the field of labor relations, on that proposition?

A I would say that where experts have expressed an opinion on that matter, they would agree with that statement.

Q Do you know of any experts or students in the field of labor relations that would differ from that statement as a finding of fact?

A I can think of only one person who would be classed as an academic economist who has ever written to the contrary, and though a number of others have written to that effect, they happen to be people employed by the employers' associations.

Q Could you name some of the students of labor relations that to your knowledge are in accord with that finding of Congress as I have read it?

A I should say that Professor Millis, who is the head of the Department of Economics at the University of Chicago, and who was last year president of the American Economic Association, would subscribe to it.

Professor Taussig, of Harvard, would subscribe to it.

Professor W. S. Ripley, formerly active on the Harvard faculty, would subscribe to it; and I think that that would be regarded as the pinion of any person I could name who has written a textbook or a standard treatise on labor problems.

MR. SMITH: May I interrupt? Did I understand you to say, Mr. Berman, that there is one economist who denies, or who would assert that the denial of the right of employees to organize is not a cause of strikes?

The Witness: I think I am correct in saying that Professor J. Laurence Laughlin, formerly, now retired, a member of the faculty of the University of Chicago, has written frequently and has made statements which in general express the opinion not only that trade unions are evils, and that strikes are unjustified, but that collective bargaining in itself is not necessary and is productive of undesirable consequences.

I know of no other economist of national standing.

MR. CARMODY: My teacher in economics used him as a textbook, and that probably accounts for my conservatism.

MR. SMITH: I am not sure that those statements really amount to a position that whether he believes in collective bargaining or not, if the employer denies the right to collective bargaining, it does not cause a strike—I don't think—or I wonder how anybody could say that in view of the statistical history?

THE WITNESS: Perhaps I ought to give you very briefly what my opinion of Professor Laughlin's opinion is based upon.

Professor Laughlin's major interest is not labor economics, but it is money and banking and the history of economic thought. He has written extensively and very authoritatively on those questions, but never the less Professor Laughlin did make—and he is not very active now, but he is very advanced in age—and he made frequent speeches before employers' associations, wrote little pamphlets which were given widespread circulation by open-shop employers' organizations, and though I can not say specifically what his attitude would be to a given situation which may arise now, I think that if he would think now as he did ten and fifteen years ago, when he wrote and talked actively about this subject, my expression of his opinion is fair to him.

BY MR. WIRIN:

Q Now, I call your attention to certain other language in the findings of the National Labor Relations Act, findings of Congress. The findings say:

> "The inequality of bargaining power to employees who do not possess full freedom of liberty or contract, and employers who are organized in the corporate or other forms of ownership and association."

Now, what is your opinion as to whether or not such inequalities of bargaining power does exist as a fact?

A I believe it to exist as a fact.

Q And is that the concensus of opinion amongst economists and students of labor problems?

A I would say that I know of nobody in the country who in analyzing a particular situation would deny the inequality of bargaining power. Even economists of open-shop associations admit such an inequality, but think that they can be remedied in a different fashion than by trade unions.

Q When you say "open-shop" associations—

A The National Association of Manufacturers, and

the United Typothetae, and the National Founders' Association.

Q Are you referring to associations who oppose unions and unionization of plants?

A Employers' associations which take as one of their principal functions opposition to labor organizations.

Q Now, this Act of Congress says that the experience has proved that protection of law by the right of employees to organize and bargain collectively"—and then it goes on and says substantially prevents industrial disputes."

What is your opinion as to the correctness of the findings of Congress as to that experience?

A I should say that "prevent" is somewhat too embracing a word. It tends to prevent, and reduces the numbers of strikes. I think with that I would be heartily in accord.

Q This is my last question: Professor Berman, the rest of the first section of this Labor Relations Act declares a policy of the State to be to eliminate the causes of certain obstructions to commerce by encouraging the practice and procedure of collective bargaining.

Do you have an opinion as to whether or not that policy of Congress would tend to eliminate certain labor disputes and strikes?

A I think that there is available a very considerable amount of evidence with respect to the history of collective bargaining in certain industries, to demonstrate the truth of that. There are exceptional instances —or perhaps there are many cases in which the attitude of employers to workers' organizations, and the attitude of workers' organizations to employers, has been so bad to start with that the mutual negotiations, and the collective agreements, had not had a long history, but on the railways, in the clothing industry, in certain of the metal industries, I think the most suc-

cessful and oldest example is the stove industry, and in a very considerable number of industries of some importance, that is true; and I think without question it is true in the mining industry, where there actually have been joint agreements in effect.

Q With respect to my particular question, what we would like to know is whether or not, in your opinion, the policy of Congress which I have read to you would tend to eliminate certain strikes, and tend to prevent certain strikes?

A I agree that it would.

Q State whether or not that is the concensus of opinion among economists and experts in the field of labor relations?

A The answer to that is that where such persons have discussed the matter, I think that they have expressed an opinion somewhat similar to that I have stated as my own.

Q You say "discussed." You mean in publications?

A A person may write an article or book on labor organizations or labor problems and not discuss specifically the question as to whether a collective agreement has had the effect of reducing strikes in a given industry. In general, I believe it to be the opinion of economists that that is the effect of such machinery, and that is the effect of collective bargaining and the guaranteeing of certain rights of organization to employees.

MR. WIRIN: That concludes my questions of Professor Berman. Are there any further questions by the Board?

MR. SMITH: To what extent, Professor Berman, if any, has the request for federal troops in the first place, or the presence of preserving peace in the situation, but for the purpose of protecting the processes of commerce, so to speak?

THE WITNESS: I should say rather clearly that in the important coal strikes, in some of the important

railway disputes, and in the steel strike of 1919, those two things were borne in mind, though the use of troops was limited just to their use in Gary, Indiana.

On the other hand, federal troops have been used in several instances for other purposes.

CHAIRMAN MADDEN: Thank you very much, Professor Berman.

MR. WIRIN: At this time we have a witness who is perhaps a little out of order in terms of the start or development which Professor Berman made, but we would like to call Professor Slichter, who is here and who wants to get away. Whereupon

SUMNER H. SLICHTER

was called as a witness on behalf of the Board, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR WIRIN:

Q Your name is Professor Sumner H. Slichter?

A Yes, sir.

Q And are you connected with the faculty of any university in the United States?

A I am Professor of Business Economics at Harvard University.

Q How long have you held that post?

A Since 1930.

Q Were you connected in any way with an organization—I will withdraw that.

Were you and are you connected with the Twentieth Century Fund?

A I was a member of the special committee of the Fund which participated in a study of the labor problem about a year ago.

Q And will you tell the Board what the Twentieth Century Fund is?

A The Twentieth Century Fund is a non-profit-

seeking foundation, philanthropic foundation, which has devoted its resources to the independent study of public questions, particularly in the field of economics.

Q Can you tell us who sponsored, or who contributed the funds or sponsored the foundations?

A The founder and principal contributor was Mr. E. A. Filene, of Boston.

Q Now, do any partisans participate in the work of the Twentieth Century Fund, when it undertakes an investigation or research into a problem? Or is it the effort of the fund to attempt to secure objectivity and impartiality in such research as it undertakes?

A Well, the effort of the fund, I should say, is to obtain as objective and as impartial research as possible, and to bring to bear on the research the points of view of independent people of more or less varied slant.

Q Can you tell us in a general way some of the studies which the foundation undertook and published?

A The fund has published a study on the debt problem, in the United States.

Q Well, did it also undertake a study on the problem of Government and Labor?

A Yes.

Q And as a rule, does the Foundation publish the results of the study?

A Yes.

Q And as a rule, are certain research experts retained for the purpose of ascertaining the facts and then those facts are referred to a special committee of outstanding persons in a particular field for comment and recommendations for action?

A Yes.

Q And was that practice followed with respect to the study of the Government and Labor?

A Yes, a staff of technical experts.

Q I will ask you to state who the technical experts that prepared the material or did the research work, were?

A The Director of the Research was Alfred L. Bernheim. Do you wish the members of the staff?

Q Please.

A Mr. D. J. Saposs was Assistant Director.

S. D. Spero, Research Associate.

And in addition, Margaret Brissenden, Cary T. Glasser, and Estelle Schrifte.

Q. Were all of those persons selected for their reputations as careful research students?

A Yes.

Q Now, was there a special committee that was designed to study the work of the research staff and make recommendations for action?

A Yes.

Q And will you let us have the names of—or were you a member of that committee?

A Yes.

Q And will you let us have the names, and something about the members of that committee?

A Well, this committee was intended to represent more or less varied experience, and possibly points of view.

The Chairman was Mr. William M. Davis, a lawyer, and formerly National Compliance Director of the N. R. A.

Q Who were the other members?

A Mr. William L. Chenery, editor of Collier's Weekly; and Henry L. Denison, president of the Denison Manufacturing Company, William H. Leiserson, president of the National Mediation Board, for the railroad industry, and John D. Winant, former Governor of New Hampshire.

Q Did you, prior to your becoming a member of this committee, take any interest in the problem of labor relations?

A Yes. That was the special field of economics in which I was primarily interested.

Q How much or how many years of study have you devoted to the problem of labor relations?

A A little more than twenty.

Q Now, did the committee of which you were a member, after studying the research report of the research students, retained by the Foundation, did the committee arrive at any recommendations for action with a view of avoiding certain industrial disputes and strikes?

A Yes, the committee arrived at a fairly detailed recommendation—recommendations which were embodied in the report, entitled "The Program of Action."

Q Was the report published in its entirety?

A Yes.

Q Including both the findings of the research staff and the recommendations of the committee?

A Yes.

Q What is the publication called?

A The publication is called "Labor and the Government."

Q Published by the "Twentieth Century Fund"?

A Yes.

Q Now state whether or not the recommendations of the committee were made prior to the enactment of the National Labor Relations Act?

A Yes, they were made about March of 1935, I believe.

Q Are you familiar with the testimony of William M. Davis before the Committee on Education and Labor when it was when it was considering the Wagner Bill, which is known now as the National Labor Disputes Act?

A Yes.

Q The National Labor Relations Act?

A Yes.

Q In the course of which Mr. Davis said that the Committee of the Twentieth Century Fund arrived at recommendations for action independent of and without any knowledge of the recommendations which Senator Wagner and Mr. Connery were considering?

A Yes.

Q Is it true, therefore, that the recommendations of the Committee were made independently of the recommendations of any persons interested in the Wagner Bill?

A Yes, they were completely independent.

Q And are you familiar with the provisions of the National Labor Relations Act?

A Yes.

Q Can you state whether or not the recommendations of the Committee of the Twentieth Century Fund made independently of the study of the problem of the Labor Relations by any person connected wit hthe Labor Disputes Act, whether or not your recommendations are similar to or different from the present provisions of the National Labor Relations Act?

A I should say that they were essentially the same. There are a few minor variations, but essentially they were the same. We felt that the protection of workers against interference by employers in their right to organize should be given them, and protection against discrimination, and we came to the same conclusion with respect to the problem of a majority rule which is embodied in the Wagner Act, and we suggested substantially the same sort of enforcing agency as the Wagner Act provides, substantially the same powers of enforcement.

Q I believe your committee suggested that the agency be called a "Commission," whereas the Agency is now denominated as the "Board"?

A Yes.

Q Did your committee make any recommendations for federal action in so far as the problem of company dominated unions is concerned?

A We recommend the same prohibitions, substantially the same prohibitions, against the contribution of finances or equivalent support by employers, but I don't think that the phrase "Dominate" was used.

Q I beg your pardon. That is my own phrase. That is not in the Labor Relations Act, nor, as I understand it, in the recommendations of the Twentieth Century Fund Committee.

Were the recommendations of the Twentieth Century Fund Committee, with respect to what I have denominated company dominated unions, the following:

That the employer was prohibited from interfering in any way with the formation of any collective bargaining agency of his employees, or with the choice of employee representatives for collective bargaining, or to contribute finances or equivalent support to any such collective bargaining agency?

That was one of our recommendations.

Q Now I show you what purports to be a summary of the report of the Twentieth Century Fund, and quotations in detail of the recommendations for federal action made by the committee, and I ask you whether or not the summary is a fair one, and the quotations correct, to the best of your knowledge?

A Yes. There is a mis-print apparently on the first line of the last paragraph on page 4.

Q If you will tell me where it is, I will make the change in ink.

A It is apparently along here.

Q Well, that can be corrected. Other than what you said is a misprint at the place which I shall mark, as I have now corrected in ink, is the quotation an accurate one?

A Yes.

Q At this time, we will ask the Board to take judicial notice of the entire publication known as the "Labor and Government" being a publication of 1935, published for the Twentieth Century Fund, Inc., by the McGraw-Hill Book Company, New York and London, and ask that there be introduced in evidence and marked as the Board's Exhibit 10, the document which Professor Slichter has identified, and as now corrected, is presumably correct.

CHAIRMAN MADDEN: The exhibit may be admitted; and I suppose the question of judicial notice of that publication is an arguable one, but we will not argue it here.

(Said paper above referred to was received in evidence and marked as Board Exhibit No. 27, Wheeling Steel Corporation; Board Exhibit No. 70, Jones & Laughlin Steel Corporation; and Board Exhibit No. 15, Crucible Steel Company of America.)

MR. WIRIN: Our position is that the volume itself is of sufficiently wide circulation, and has for its authors persons of sufficiently good reputation, that the Board may take judicial notice of it.

That is all of this witness.

CHAIRMAN MADDEN: Thank you very much, Mr. Slichter.

MR. WIRIN: I would like to call Dr. Leiserson, as the next witness.

Whereupon

WILLIAM J. LEISERSON

was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WIRIN:

Q Your name is William J. Leiserson?

A That is right.

Q Are you connected with the National Mediation Board?

A I am.

Q And in what capacity?

A I am the chairman.

Q And by virtue of the action of what person did you become the chairman?

A I was elected by the Board, and the Board annually, under the law, elects the chairman of the Board, and I have been the Chairman for the last two years.

Q By virtue of whose authority did you become a member of the Board?

A By appointment of the President, and consent by the Senate.

Q Prior to your becoming a member, and Chairman of the National Mediation Board, were you a member of any governmental agency concerning itself with labor disputes?

A I was Chairman of the Petroleum Labor Policy Board, located in the Department of the Interior, and was one of the Boards established for the purpose of assisting the Administrator of the Petroleum Code, in carrying out the labor provisions of the Code.

Q By whom were you appointed to that position?

A By the Secretary of the Interior.

Q And prior to that time did you hold any official position involving labor relations?

A I was Secretary of the National Labor Board, the original board that was appointed by the President, shortly after the enactment of the National Recovery Act.

Q Are you associated with the staff of any university?

A I am on leave of absence from Antioch College, Yellow Springs, Ohio, and I am Professor of Economics there.

Q How long have you spent in either studying labor relations or in various agencies seeking to apply certain principles designed to eliminate labor unrest?

A I have been studying labor questions, leaving out the period of undergraduate work in the college, since about 1909.

Q Have you participated in any way in the solution of labor difficulties in the men's clothing industry

A Well, "solution" is a big word.

Q I mean an effort at solution.

A I have participated in trying to adjust labor relations in the men's clothing industry, and adjusting labor relations is just like adjusting domestic relations; they don't stay.

Q You mean they are permanently unadjusted?

A Not problems that are solved once and for all, like physical or scientific problems. They are human problems that tend to get out of adjustment, from day to day, and have to be managed and controlled, and so on.

Q But as the result of the observation over a period of years of the nature of difficulties between the employers and employees, may not certain general principles be arrived at?

A Oh, yes.

Q With a reasonable hope of their working?

A There are certain general principles and methods which long experience in adjusting labor relations have revealed tend to make for essentially friendly and harmonious and peaceful relations, and there are certain others that tend to make for antagonism and strife.

Q Now, with respect to the men's clothing industry, were you Impartial Chairman or Impartial Arbitrator of any of the Boards set up in that industry?

A Yes, I acted as Impartial Chairman, as they called it, of the Labor Adjustment Board in the Clothing Industry of Rochester, New York, which included about nineteen employers and most of the employees organized in the labor union, and I was there from 1919 to 1921.

From there I went in the same capacity, Impartial Chairman of a Board of Arbitration, as it was called, in New York City, for about a year and a half, and part of the time I was acting both in Rochester and in New York.

From 1922 to 1925, I was the Impartial Chairman of

the Board of Arbitration, as it was called, in the Chicago Market, and while I was in those positions I was always acting on a part-time basis, as the Impartial Chairman in the Baltimore Market, and I was called to handle an occasional dispute in Boston, Cleveland, and Montreal, Canada, in the same industry.

Q I wonder if you will be good enough to give us the names of some other persons who were Impartial Chairmen or Arbitrators in the men's clothing industry?

A Well, the original Arbitrator, or Impartial Chairman, and the daddy of us all, was a man named John H. Williams, who was the original Impartial Chairman of the Arbitration Board in the clothing industry in Chicago, Professor Tufts, John H. Tufts, who was Professor of Ethics and Philosophy at the University of Chicago, acting in that capacity; and Professor Millis, H. A. Millis; and Dr. Squires acting in that capacity now; Benjamin M. Squires—and George H. Bell was the Impartial Chairman in New York.

Q Was Mr.—and now Justice Brandeis an Impartial Chairman?

A He was in the ladies' clothing industry.

Q Prior to the setting up of that Impartial machinery were there strikes in the men's clothing industry?

A Prior and after.

Q Was there any difference in the quantity and extent and nature of the strikes prior to the setting up of the machinery and subsequent thereto?

A Yes. It is very difficult to generalize on a question of that kind, but this may be said about the experience.

In Rochester, New York, for example, where periodically before the manufacturers could see their way to acknowledging the right of employees to have an organization for collective bargaining, prior to that time there would be innumerable shop strikes every time

piece rates had to be fixed, and periodically every two or three years, or perhaps five years, there would be a general strike in the Market.

Now, similarly, in other Markets, but beginning in 1911, after a very bitter strike, Hart, Shaffner & Marx, in Chicago, entered into a collective bargaining agreement with the union of clothing workers.

Q How extensive was that strike?

A Well, it included all those shops of Hart, Shaffner & Marx, and since that time there have been no strikes, or very occasionally, in shops were a few men might stop, but no problem.

This agreement, which was first for a year, and sometimes it would extend to two or three years, but going on new from year to year, provides for a method of settling all differences.

The rest of the Chicago Market had not been like that up to 1919, when after a very bitter strike, the same machinery was set up for the rest of the Market.

Q Were there strikes in those other plants prior to 1919?

A Yes, plenty of them. Now, since that time, so far as the employers and the employees in the labor organization are concerned, that have been dealing with each other, and that are convinced that is the way to deal with each other, we say that while there have been innumerable disputes, that those disputes have not been fought out on a war basis, and they have not been fought out by strikes. There have been civilized methods of adjusting and handling them.

Q Were there any stoppages of substantial quantity?

A Occasionally people lost their heads, and they always will lose their heads. You can't have any machinery by which you will guarantee that nobody will lose their heads. That is, both the employers' side and the other side; but it isn't a problem of any importance, and certainly not a problem in affecting the public in any way.

People get excited in the shop every once in a while, just as in every well-managed shop, every once in a while somebody punches somebody else in the jaw, but those are not problems.

Q Did those situations under the impartial machinery subsequent to the entry into agreements—did those situations result in general strikes or wholesale stoppages?

A No. On the contrary, those are usually punished by the impartial machinery, as it is called, or impartial machinery insists that the union of employees shall punish any group that stopped working contrary to the agreement, or the management shall punish any foreman who has acted that way.

Q Just a minute. In those instances, where the impartial machinery orders the unions to punish those who have participated in the acts you have mentioned, has it been the experience of the impartial machinery that the unions have complied with the orders?

A There has been no question as a whole, on the part of either party, living up to its agreement, or complying with awards.

Now, this is true, however: Every once in a while an employer would feel that he would like to manage his own business, as he called it, and not recognizing that the employees wanted to manage their own business, too; and so he would either say he doesn't want to go along with the agreement, or he would want to move out of town, where he could get away from dealing with an organization of his employees, so he could deal on an individual basis.

Now, there have been strikes, through the years, in Chicago, and occasionally in Rochester, against such firms. The unions called them lock-outs, and the employer had locked them out, and the employer called them strikes.

But for our purposes, from the point of view of the

public, they were just war-like methods of settling their quarrels, rather than using that machinery.

Now, in New York City, there has been a little different situation, alone to itself.

The industry there is made up of a large number of small sub-employers, really, that are contractors. The employer, the real employers in the industry, find managing human beings too difficult, so that contract out of the job, of handling their labor, by hiring contractors to do the work, and they pay him a lump sum for making a pair of pants, and he hires the labor and runs his little shop.

Now, there are just thousands and thousands of them, and every year new thousands go in the business, and others go out. Now, under that kind of a situation, strikes happen very frequently. Those employers, however, those larger employers who had their inside shops or assumed a responsibility for the contract shops that have been dealing on this basis of collective bargaining, there have been very few strikes there, but the large number of strikes that you hear about in the clothing industry come from this contracting situation.

MR. SMITH: May I interrupt to ask Mr. Leiserson this:

Are there collective agreements in these contract shops?

THE WITNESS: There is an attempt to make collective agreements. What happens is that a general agreement is made, and the agreement is with the main employer, that any work sent out to a contract shop shall be under the same conditions; but what goes on in a contract shop, only the boss and his wife really know.

And it is very difficult to control and regulate the condition. Now, attempts have been made to include them under agreements in another way, by saying that every contractor shall be registered as belonging to particular employers, and an agreement has been

made to prohibit employers from swiping contractors from each other, and all of that sort of thing. That has not worked out very successfully.

More recently, they have organized a rather strong association of contractors, so that the contractors can bargain collectively, too, and you have got then the manufacturers' association, and the contractors' association, and the employees' association, or union, and they try to standardize conditions on some kind of a civilized basis, and it has a good deal of promise, but the actual operating conditions in the industry are so disorganized that you don't know how long that promise will stand.

BY MR. WIRIN:

Q Let me ask you, was there in 1921, in New York City, a general strike that tied up the entire New York Clothing Market?

A Yes.

Q Do you have any approximation as to the number of workers involved?

A Oh, no. Many thousands. I couldn't tell how many.

Q Did that tie-up the entire clothing market for the New York area?

A Yes, sir, for some months.

Q Is the New York market the major clothier's market in the country?

A Yes.

Q After that general strike, was there a collective agreement entered into between the union representing the workers on the one hand, and an organization known as the New York Clothing Manufacturers' Exchange on the other?

A Yes, sir.

Q Was the New York Clothing Manufacturers' Exchange organized by the employers for the purpose of engaging in collective bargaining with their employees?

A Yes, sir.

Q And for the purpose of entering into a collective agreement?

A Yes, sir.

Q With what union was that agreement made?

A Amalgamated Clothes Workers of America.

Q Now, did that agreement set up—I will withdraw that—was that agreement the origin of the phrase "constitutionalism in industry" or is that phrase older than that?

A No, that phrase had been used quite often in discussing collective bargaining. The first I recall seeing the phrase was in a description of the collective bargaining in the coal mining industry, and this was written along about 1898 or 1899, showing that what happens instead of arbitrary government by the employer of large numbers of employees that work for them, which as a rule are laws for the employees, instead of his well-being finally. There must be some measure of consent given by the employees, and these agreements set up that sort of a constitution for the government of the industry, and the description used the analogy of the employers group of representatives being a House of Lords by their own right, and the employees group of representatives being a lower house, because they elected them, and that what they laid down are the laws, and then they have provisions for interpreting or adjudicating disputes under those laws; but for a long time people who have studied the question have made this distinction.

You can look upon labor in industry as a commodity to be bought and sold, and the price fixed in a market.

Q The Clayton Act says that that can't be.

A It didn't say it can't be, it said it isn't; which is a different thing.

The other was that labor is a citizer in industry. If you start with the idea that labor being a citizen in industry, then you use the term constitutional gov-

ernment when he gives his consent and bargains collectively, and otherwise you say the market will get what is right for him.

Q Now, with respect to the problem of the New York Clothing industry, which we were discussing:

Did the agreement which was arrived at between the employers as organized in the New York Clothing Manufacturers' Exchange on the one hand, and the workers as organized, the Amalgamated Clothing Workers of America on the other hand, provide for impartial machinery for the disputes?

A They set-up that kind of a Board, and that kind of a Board is now functioning.

Q Now, prior to the 1921 general strike, and the entry into the collective agreement which you have described, were there strikes in the New York Clothing Market, and if so, were any of them caused or did they involve the question of collective bargaining?

A Well, nobody could count the number of strikes in the New York Market. They were innumerable. But this may be made as a general statement:

As long as the employer insists that the business is his own, that investors invest money in it, and have some say in it, but that labor does not invest anything in industry, and therefore isn't entitled to have any say, but just take it or leave it, the employer refuses to deal with any representative or organization of the employees, will not bargain with them, and will not permit the employees to sell their labor cooperatively as we would say, in the agricultural industry—you have a very large number of strikes that grow out of that situation.

Q Were there in New York, prior to 1921, strikes that grew out of the situation that you have just described?

A Lots of them, most of them.

Q Now, what change was there, if any, with re-

spect to that kind of strike, after the entry into the collective agreement which you have described?

A For those employees who entered into the agreement, that as a cause of strikes disappeared, but there were some that didn't enter into the agreement, and they refused to do it, and there was a lot of strikes on that grounds.

But that was not the sole cause of strike, but it is a very important cause of strike.

Q Now, what has been the history of strikes and stoppages, if there has been any such history, in the New York clothing market, subsequent to the general strike of 1921, and the collective agreement entered into?

A Just the same thing.

Q Have there been any general strikes?

A There have been every once in a while. It has been called a general strike, when all of the contractors and small shops were called out, every once in a while.

Q That includes those who were members of the collective agreement?

A Well, you see, only the employers themselves were members, and the contractors, some of them may have worked for members and some may not have worked for members, and these strikes usually occur at times when an agreement is to be renewed, or when it has expired, and they don't know how many employers there are, and they don't know how many shops there are, and one way of counting them is to call them all out on strike, and then they find out.

Q Now, in so far as the impartial machinery set up under the collective agreement is concerned, have there been occasions when the impartial chairman has ordered the union to punish workers who went out on strike?

A No, as a matter of fact they aren't strikes, but there are occasionally employees who have done something contrary to the agreement. They said, "We won't

work for such and such a rate," and so on, and they either stop working by sitting at their machines, or walked out, which they should not have done, and the impartial chairman orders them back, and they balk awhile, and then they go back.

Q Does the union cooperate in getting them back?

A The union orders them back, and the impartial chairman really orders the union to send them back, and they send them back, and there are various forms of punishment, like they have to make up the time they lost by working overtime without getting extra pay for it, or something like that.

Q The agreements which have been drawn up from time to time between the employers and the workers, each side represented by an association, have those agreements, so long as those agreements were supposed to be enforced, been kept?

A On the whole, they have been kept.

In all of the market, there isn't this notion that agreements aren't enforceable, or aren't kept. By and large, when these agreements are made, they are kept and enforced, and occasionally you have a different situation.

Q Don't those agreements provide that there shall be no strikes or lock-outs during the term of the agreement?

A Yes.

Q And the agreements have been kept in so far as those provisions are concerned?

A Yes.

Q Now, with respect to the New York Clothing Manufacturers' Exchange, which represents the employers, do they have a personnel manager to represent them?

A They have a Labor Manager.

Q What kind, or what are his duties, and what does he do, and why?

A He represents the employers, just the same as

the officials of the union represent the employees. The employers discover after they have experience with labor trouble, and most industries have had that experience, that while they know something about merchandizing, and financing, and such things, when it comes to dealing with human beings, they are boobies, so they hire experts. They hire personnel managers, or they call them labor managers, or directors of industrial relations.

Q Are they competent persons, as a rule, for the purposes for which they are hired?

A I can't say that. Employers think that they are competent—I can't say about that. I know some very competent people who are in that business of representing the employers in labor matters. They go to the university and get psychologists to give the workmen mental tests and measurements, and classify them, and they are supposed to know the psychology of working people, and they know how to sell the policies of the company to employees, and they know how to work up a friendly relationship, and so on.

Q What I would like to ask you now is, do these personnel managers, whether psychologists or what not, do they render a service to the employers which the employers don't know how to render for themselves?

A Certainly; otherwise they wouldn't hire them. In the literature of personnel management, or in the speeches that are made by both employers and personnel managers, they say that the small employer in the old days could talk to each employee, and knew him by his first name, and therefore the relationships were good and friendly, like in the family.

Now, with the growth of large scale operations, the employer has lost contact with his employees, and he doesn't know their first names any more, and therefore he has to get somebody, and he is busy with a lot of other things, and therefore he has to get somebody, and specialize them at the function of handling what he

used to do in a friendly way himself, before.

Well, now, personally, I don't think that that squares with the facts, but anyway, it is a theory that they go on.

The fact is that they have these personnel managers, or labor managers, with a specialized function of handling the employees.

The fact is also that when some of the most bitter labor troubles occur, they come from the smaller industries, where the employer does know his employees by their first name, but he calls them other names, and as a matter of fact, the history of labor organizations shows that the most bitter conflicts, and the origin of unionism, is in small plants, rather than large plants.

Q Let me ask you whether or not, just as the employers on the one hand hire persons whom they consider experts in the field of labor relations in dealing with their employees, to the advantage of the employer, whether or not employees have resorted to the use of experts, and if so, what are they?

A These questions that you are asking, really go into the theory of collective bargaining, and the purpose of employees in setting up unions.

All that is involved there is this: With the development of industry and corporate enterprises, just as one person with his own money can't run much of a business, but has to chip in with a lot of other people, and form a corporate enterprise to raise the capital and so on, so on the employees' side, if he is going to get, if the employee is going to get a decent wage for his labor, he finds that he can't do it by his own knowledge in the labor market, and he is ignorant of the labor market, and he has disputes with the persons who hire him.

He doesn't know how to handle those disputes, and every employee, besides being a laborer, has to be a merchant, and he has to sell his labor.

For some years I ran a public employment bureau

that brought laborers and jobs together, and my experience in that was this: From interviewing and handling thousands and thousands of workers that came to the office, I found that if a fellow was a first-class workman, careful and intent on his work, he was a rotten salesman. When he went to an employer, he didn't know the first thing about how to sell himself to the employer to get a job. If he could only get on it, he would soon demonstrate it.

But he mumbled, and he was afraid to talk, and all of that.

On the other hand, the fellow that could come in and talk and sell himself quickly, they were pretty rotten workmen.

Salesmanship and careful workmanship don't usually go together. Now, the same way with respect to people who are engineering managers of large corporations, or good financial managers. They are not usually good salesmen, so they hire men at very large salaries, to sell their labor.

Those are the fellows that we have to look out for, these high-pressure salesmen.

Now, all that collective bargaining means is that just as the employer hires men, specialists in the hiring of labor, they call personnel managers, or labor managers, or industrial relations directors, they are outsiders in the industry. They don't know anything about the work, particularly, but they are experts in hiring, and handling labor.

Now, the employees need something just like that. How are they going to get it? The fellow who gets $25.00 a week, how is he going to hire a high pressure salesman to sell his labor for him?

He chips in through an organization, just like thousands of farmers chip in and form a cooperative selling organization, and then they get a high-powered salesman who knows how to sell their stuff, and a high salaried one, so the employees put in together their

dues in an organization, and they hire a fellow that they call a business manager or a business agent, and employers who don't like it often call him walking delegate, but they are the personnel managers or industrial relations directors for the employees.

Now, the purpose of collective bargaining is to put the two groups that have to buy and sell labor, and determine the conditions on an equality, so that each one can have the same kind of competent people to make the employment contract or the conditions for the employment contract.

Q Now, Dr. Leiserson, with respect to the kind of person who becomes the representative of labor, does the person change as the relationship is changed? What I mean by that is, when the situation is one where strikes are the order of the day, is the situation different?

A That is true on both sides, in this way: When the employer feels in handling his labor, the proper way to do it is to prevent them from having an organization, to see that each one is willing to accept the employers dictation of terms or else go, then the employer doesn't hire these psychologists, and that kind of personnel manager.

He is more likely to hire an ex-saloon keeper, and a detective, and people of that kind, who noses around in the employees' meeting, because they are on a fighting basis, and he will hire organizations that exist to help destroy labor organizations, and the same way on the employees' side.

When the employees attempt to set up their cooperative organization, and they go to the employer and he fires them, because he has known all about it before through spies or other methods, obviously a nice, gentlemanlike fellow is not going to survive as the business agent of that kind of an organization. He has to be a really high-pressure salesman, and he is the warrior type, and he has to know how to threaten, "If you

are going to fire us," he has to say to the employer—"we will all walk out and tie up your plant."

That is the kind of fellow that survives when the employer has on his side the kind of people that want to destroy their organization.

When they both get on the basis of recognizing each other's rights, and wanting to deal with each other, then often difficulties arise in the first years, because you have got generals and warriors trying to do business on a business basis, just the same as when generals and warriers try to make treaties of peace, and maintain peace.

Then wherever you have collective bargaining over a long period of time, you will find that the type of warring business agents of both sides tend to be eliminated, and a business like person on each side tends to survive as the person that represents the two contracting and bargaining parties.

Q Now, you have already told us, I believe, about the advantages which the worker gets from being a member of a labor organization that is responsible—what advantages does the employer receive, if any, as the result of the entry into collective agreements with responsible unions, as in the case of the men's clothing industry?

A Well, there is a lot said by the employees to justify in the employer's mind that this will help them, too. But those after all are arguments. The employer has his organizations, and he gets advantages from organization, and he knows that he gets advantages from his organization. The employee has his organization, and he knows he gets those advantages.

Now, it is true if they deal with each other in a civilized and businesslike way, instead of a war-like way, that there are benefits for both sides. For example, most of the first collective agreements were set up in competitive industries, covering a large field, so that every employer knows, and every other, knows that

every other employer is paying the same rate of wages as written into the contract, and there is no chiseling of the other fellow getting his labor cheaper, but it equalizes labor costs and that is one of the main advantages.

The other advantage is that the innumerable disputes that are bound to come up, and come up all of the time, are settled in an orderly way, and not by constant interruption of production. One day's interruption of production may be worth thousands of dollars, whereas for a few hundred dollars this machinery can operate for settling it in a civilized way.

Q Now, does the general public derive any benefit as a result of these collective agreements?

A Of course they do. The general public ordinarily doesn't know anything about labor disputes until the war comes on, and then it insists, usually, unintelligently, the war has got to be stopped, as if the people who went out on strike were the cause of the whole thing.

But when the public, through the Government, has made efforts to make sure that these disputes can be settled before they develop into war, then its benefit comes in the orderly settlement of those things so that the public doesn't know that it is getting the benefits. It just assumes that nothing happens.

Q Now, Doctor, in terms of your experience in the clothing business—

MR. CARMODY: On that point, of the cost of this industrial strife, isn't it true that the total cost of long industrial strife is added to the product?

The Witness: Well, of course the cost of every strike goes into the operating expenses.

BY MR. WIRIN:

Q Does the public foot the bill in the end?

A Whoever pays the prices for the thing, for the product, pays for the strike, and in many industries the strike and strife is a part of the method of production. They consider it more or less inevitable.

Q With respect to the men's clothing industry, all of the men folk of American contribute to the cost of strikes in that industry?

A As far as they buy clothes.

Q Now, in terms of your experience in the men's clothing industry, what is your opinion as to whether or not this proposition is true, namely, that certain causes of disputes, like wage disputes, and disputes as to the number of working hours, can be conciliated or mediated or compromised or adjusted, but that certain other causes of disputes, namely, interferences by employers with the right to collective bargaining, can not be conciliated or compromised, but should be protected by law?

A That doesn't apply to any industry. Of course, it is obvious that if you have a dispute over wages, and disputes as to what hours should be worked, and things like that, there is no absolute testimony or rights that you are entitled to eight hours or seven hours, or $25.00 a week or $30.00 a week. Those are questions that people are willing to compromise on, and can compromise on, and if it goes to an impartial third party, an arbitration board, it is a question that they can settle in the light of comparable circumstances.

So ordinarily it is said that those questions are arbitratable.

But when the question comes up, "Shall I have a right to join a labor organization, without interference by the employers? or "Shall I have the right to bargain collectively with the employer?" or "Shall the employer have a right to determine conditions without interference by his employees?" as he calls it, well, that is a question that is ordinarily called not arbitratable, because each says, "Why, that is a matter of principle, and if I recognize the union, I would be letting them run my business' and the union says, "If we let the employer lay down the terms, then we have nothing to say as to what we will get for our labor."

Now those are questions of principle.

Now, it is always on questions of principle that people go to war about, and kill each other, and of strikes, and so on. On these other matters, you can arbitrate.

Q For the purpose of clarification, let me ask you, Doctor, whether or not, after the introduction of the impartial machinery which you have described as a result of collective agreements, there have been less or more strikes?

A Very much less.

Q Now, you stated that you were Chairman of the National Mediation Board?

A Yes.

CHAIRMAN MADDEN: Are we changing the tempo of this?

MR. WIRIN: Yes.

CHAIRMAN MADDEN: We will recess for a few minutes.

(Whereupon a short recess was taken, at the conclusion of which the following occurred.)

CHAIRMAN MADDEN: You may proceed.

MR. WIRIN: I think now we are ready for a ride on the railways.

BY MR. WIRIN:

Q What are your duties as chairman of the National Mediation Board?

A Well, I have general charge of the work of the Board, and it has some duties very similar to that of the National Labor Relations Board. We settle disputes that arise among employees, as to who is their representative for the purpose of collective bargaining, if our services are invoked, of course, and we conduct elections and certify who is the duly designated representative. That is one duty.

We also have mediation duties, and we mediate disputes between employers, and employees, whenever they want to change their agreements or make modi-

fication of the agreement, and if strikes should occur or threats of strikes, we have to settle those, and we have to arrange for arbitrations, and we have some duties in connection with the Board set up under the Railway Labor Act for interpreting and applying the various collective bargaining agreements.

That is similar to these Clothing Boards that were mentioned.

The Railway Labor Board Act sets up a Board in Chicago, named the National Railroad Adjustment Board, which is a permanent body for effecting an industrial court for interpreting and applying the collective agreements.

Q Let me ask you, in the course of your duties as Chairman of the National Mediation Board, and in the course of your general studies, have you familiarized yourself with the history of labor relations, on the railways?

A Yes, very much. For our first annual report we—or I personally made the survey, and prepared the review of all of the railway legislation since 1888, and something of its operation, and the story is included in our report.

Q Will you tell us when was the first legislation with respect to labor relations on the American railways?

A The first Act was in 1888, and there have been a series of very bitter railroad strikes, and first in 1877, and 1878, and then in 1896, and a lot of violence, armed forces on both sides, and the country was aroused by it, and many bills had been introduced, but finally in 1888 a bill was passed.

Now, if you will let me develop this story for you, it seems to me that the experience of Congress with the first railway labor legislation shows in my mind that the Railway Labor Act, or the Wagner Labor Disputes Bill, under which your Board is operating, is just an attempt of Congress to apply to other industries in in-

terstate commerce the principle that they have found here to be necessary for handling labor disputes.

Let me show you how it developed.

The first Act of 1888 was, now we can see it, was unintelligent. We can always be wise in hindsight, you see.

How was it unintelligent? Whenever there are strikes, people say, "Oh, they ought to arbitrate;" or else, "The Government ought to investigate." They are not thinking of what are the underlying causes, and so you find in this Act of 1888, two principles laid down, that when there is a strike, if both sides agree to arbitrate, an Arbitration Board shall be set up, and a lot of description of how the Arbitration Board should be set up; or the President may appoint a Board, or a Commission to investigate this strike, and inform the public.

That was the attempt to deal with the question.

Now, I say "unintelligent" because, not to be critical but merely when we see later what happened—the people didn't know just what needed to be done, and they catch on these words like "arbitration" and "investigation" and as a matter of fact this Act was in effect for ten years, and not a single Arbitration Board was set up in those ten years and only one investigation was made, and that was during the bitter American Railway Labor Union strike, that Pullman strike. That was after it was all over, and all of the damage was done, and the question was to lay the blame.

But the Commission that was appointed made certain definite recommendations, and we learned something from the war, and in 1898 a new bill was enacted into law, known as the Herndon Act.

Q. May I interrupt you and ask you whether or not the Commission that you have reference to attempted to ascertain some of the causes and underlying facts?

A. They went into it elaborately, and had some praise and blame, and finally, a recommendation.

Q Did they ascertain whether or not the refusal to engage in collective bargaining by the employers was one of the causes or a factor in the strike?

A Well, the term "collective bargaining" was not as popular or well-known in those days as it is now, but the Commission, for instance, in its report, which was made in 1894, said that "the Pullman Company is hostile to the idea of conferring with organized labor in the settlement of differences arising between it and its employees."

And in another place, on page 26, "The Company, the Pullman Company, does not recognize that labor organizations have any place or necessity in Pullmans, and when the company fixes wages and rents and refuses to treat with labor organizations, the laborer can work or quit on the terms offered, and that is the limit of his rights."

This Commission goes on to say: "This position secures all of the advantages of the concentration of capital, ability, power and control for the company in its labor relations, and deprives the employees of any such advantage or protection as a labor union might offer. In this respect, the company was behind the age."

Q Let me interrupt you for a moment and ask you to go back to the bitter strike prior to 1888, which you have mentioned, on the railways; were any of those strikes called by an attitude on the part of the operators similar to that described by the Commission investigating the Pullman strike?

A It was exactly the same issue, and the same issue appears in every industry, and in every time when employees first want to organize, and deal collectively.

The employers don't like it. You can't blame them; you and I might not like it, either. We have had our own way up to a certain time, and then the employees become selfconscious, and they say, "We want to have our own organization, just as the employers have and we want to deal on that basis," and the em-

ployer refuses, and it is when he refuses that way that you have the bitter fight on for recognition.

It is comparable to the fight between kings and the people that set up parliament for the first time. The employers know that once you set up the right of the employees to be represented in negotiating with them, you are doing what—or they take the same position as King John; put four and twenty overlords over me, and he says, "You put this union over me to run the business."

Now, that is what causes strikes.

Now, it is interesting to see that this Commission said, back in 1894, that anyone who denied rights to employees to organize, and deal with the employer, was behind the age then, and we know those rights have been denied right along, and not only that, it was perfectly legal to deny those rights, all through.

For example, the essence of the present railway legislation, and the Wagner Labor Disputes Act, is merely the establishing for the first time, really, of a right to organize the employees. True, we have talked and courts have said, "Employees have the right to organize," and they have said that for a hundred years.

Well, you know that early in this century, and in the 19th century, when employees struck for any reason, when they struck for any reason it was a conspiracy, and one of the first conspiracy cases in Philadelphia, in 1802, the judge who heard the evidence said, "These men are charged with one of two things, either they have combined together to raise their own wages, or else they have combined together for the purpose of inducing other people not to take lower wages than they are willing to accept," and he proceeded to instruct the jury that the rule of law condemns both.. It is perfectly illegal.

It was a leading case in 1802, when Chief Justice Shaw, in Commonwealth against Hunt, of the Supreme Court of Massachusetts, analyzed this situation, and he

said, "Just as people are allowed to combine for instance, and say, "We won't drink liquor, we are going to induce other people not to drink liquor." We recognize that that is a good purpose, in organization, and for similar good purposes now, he says, we must apply that to the situation when working people combine for the purpose of improving their own condition, and they want to get better wages and better terms of employment, and have lower hours, and that is a good purpose in their eyes, and so, from that time on, the law has been, so far as I can understand it, I am not a lawyer, although I have studied the labor law in relation to labor, has been the rule, that workmen have the right to organize for legal purposes, but if you analyze that, it wasn't the right in any real sense. It wasn't a legal right.

If I have a right to own property, and you have a right to come and take it away from me, and the only way that I can keep my property is by my strength, that isn't a right, as I know the law. Maybe you lawyers know it a little better, but I don't think so.

Now, the employer had the equal right to destroy the employees' organization. That is rather interesting. When the investors combine in a corporation, and they set up this artificial entity, we call a company, that is exactly similar to employees combining in an artificial entity, which is an unincorporated association, usually, but some unions are incorporated.

Now, if employees should go out on strike and say, "I don't want to deal with the United States Steel Corporation or the Bethlehem Steel Corporation or the Standard Oil Company, "I want to deal with Mr. Rockefeller or Mr. Schwab or somebody who is a stockholder in this corporation" and they refused to recognize the officials of the corporation, and went out on strike, in most States in this country that would be an illegal strike under the laws, as I understand it. It would not be a justifiable strike, just

the same as it is illegal to strike in some States for the closed shop.

On the other hand, the employer could, he could say, "You can't have an organization here, and if you do I will fire you, and I won't deal with that," and he could do all sorts of things, like putting spies in the organization, and there is nothing illegal about it, like saying "Anyone who joins it can not work for me."

He had a perfect right to do everything in his power to destroy it.

Now, what this railway labor legislation now does, and what your Act attempts to do, is to say to employers, "You have the right to organize, and the employees have no right to strike to destroy your organization, and the employees have the right to organize. We have got to take away this one thing that you had left, namely, the right to destroy these labor organizations.

And so the essential of this new legislation, as I see it, is the action by Congress to prevent trespassing on the employees' right to organize.

Now, I will show you how in this Railway Labor legislation that was developed.

After the report of this Commission, when the Herdon Act was enacted, they learned something. They learned this investigation business didn't help much.

Q Was that after the experience of the Pullman strike?

A Yes, in 1898, and they learned something about this right to organize, and they put new provisions in there, not about the right to organize, but they looked at it negatively, you see, but they saw some mean things that were done and they said, "You shouldn't do these things, and they prohibited what in effect are now called "Yellow-dog" contracts, and are prohibited, but they did it in other language, and then they provided for some mediation machinery to try and adjust the dispute before it came into a strike.

At first, this Act was no more successful than the

other, for about eight years, and then by that time, apparently, they learned how to operate it, and then it began to operate pretty well, with the many disputes settled by mediation, where they provided for the President to appoint the Commissioner of Labor, and there was no Department of Labor then, and the Chairman of the Interstate Commerce Commission to act as a Mediation Board, and they settled a good many disputes.

Q Let me ask you this question at this point:

With respect to the disputes that were settled, were the employees represented by an organization of any kind?

A What happened, really was this: By that time the Train Service Brotherhoods, which made the four, locomotive engineers, firemen, trainmen and conductors, had established their existence and were powerful enough so that most of the railroads had to deal with them. So when they threatened to strike, when there were disputes, these mediators were able to come in and arrange between the representatives of these brotherhoods, and the representatives of the carriers, settlements, or agreements that settled this dispute.

Now that worked so well in the latter part of this Herdman Act that in 1913, the Neulands Act was adopted, which strengthened these mediation provisions, and made the Board permanent, to mediate in these disputes, and provided that they shall do everything possible to settle the disputes on the request of either party, and if they couldn't adjust it by mediation, getting them to make an agreement, then they should try to induce the parties to arbitrate disputes, and under those circumstances some, or a considerable number of arbitrations were entered into.

The important thing to remember is this: That these people who were now settling their disputes by mediation and arbitration, had by force through all of those strikes and threats of strikes, established their right to organize, so that the railroad companies, and

the carriers, were afraid to destroy those organizations, and they couldn't do it.

Well, they couldn't do it, they had to deal with them, and during these years they have developed this business relationship that I was telling you about, and so now you hear over and over again, that representatives of the railroad brotherhoods are really businesslike people, who manage the union affairs properly, and so on, and they are good unions, and so on; but the only difference between them and the others is that they are older, having been in the business for many years, they have developed a type of responsible businesslike leadership and it never occurs to a railroad manager, now, to say, "I won't deal with you," because he recognizes the men, who come and deal with him as equals, and they represent labor just the same as he recognizes the legal counsel of some company that sells him materials or something like that.

On that basis, you can get along.

Q Now, let me ask you this, at this point.

Did both the Herdman Act and the Neulands Act, in so far as they set up mediation machinery, assume the existence of organizations on the part of employees, to represent them, as a basis?

A Most of it dealt with disputes where there were organizations of employees, and employers recognized and dealt with them.

Q Let me please ask you then, could the disputes have been mediated as a practical matter or adjusted, if the workers weren't represented by some organization in collective bargaining?

A Well, if any considerable number of employees go out on strike or have a dispute with the employer, somebody has got to talk for them, and they can't all talk at once, but they have got to have a representative, and even if they did try to talk at once, every one of them wouldn't know what to say. He doesn't realize the problems. All he knows, he has grievances, and

he is rather inarticulate in stating those grievances and likely to just blame the management for everything.

But when they get together, in the meeting, and talking it over, and then they work out their problems, and they appoint a committee, or a person, to represent them, who tells them, "Now, there is no use of your just blowing off steam like that; I can't go and negotiate anything that way. You have got to give me instructions. What shall we do about this, and what shall we do about that," and it is by that process that representation developed, and intelligent business bargaining comes around.

MR. SMITH: On that same point, was it the lack of adequate organization on the part of the railway workers, or perhaps a failure to recognize such organization as existed which was responsible for there being no arbitrations under the Herdman Act?

THE WITNESS: More than that. For instance, the early Acts, when they provided for arbitration, provided that an organization had to be bound to live up to it. There couldn't be any arbitration with a lot of individuals, and there was some vague provision in the Act, if one hundred individuals, for example, would get together and sign a petition, that they would live up to the agreement, then they also might come under the arbitration.

The whole thing presumed organization, and there can't be any arbitration, obviously, if there is to be any responsibility to live up to the award, unless there is some kind of an entity and authority to enforce the award so far as the employees are concerned.

BY MR. WIRIN:

Q Now, Dr. Leiserson, just as the workers were organized on the one hand, as you have described were the operators, or the employers, organized in any form?

A Well—

Q And represented in negotiations with their employees?

A They have associations, and sometimes these associations deal with labor, and sometimes they do not. Usually the contracts are made with each individual carrier, but these carriers have various kinds of associations and meetings for dealing with their problems.

Q Was that true during this period of the functioning of the Herdman and Neulands Acts as you have described?

A It was developing at that time, just as the labor union was, unions were.

Q Now, what happened in 1916, or are you ready for that, in your historical sketch?

A In 1916, the question came up, where all of the brotherhoods on the railroads wanted an eight-hour basic day, and they had been working a ten hour basic day, with overtime for anything over eight hours. That was handled between representatives of the employees nationally, in the general movement, and representatives of the carriers nationally, and it illustrates that there is no absolute guarantee of peace, and they had all of their negotiations and everything, and the question came up, that they couldn't agree on.

The brotherhoods did not want to arbitrate that question.

It then went to the Congress, and President Wilson sent the message that he thought public opinion no longer countenanced more than an eight hour day, or something like that, and finally the Adamson Act was passed, which gave the employees about what they were asking.

Now, there is an interesting case, as a matter of fact, the dispute was never settled by that Adamson Act. After it was passed, a judge in a lower court declared it unconstitutional, and the men threatened to strike again. The war was coming on, and the National Council for Defense was set up, and a committee of that got together, and got the parties together, and set-

tled the thing, and shortly after it was settled on the basis of the law, the Supreme Court, in Wilson vs. New, upheld the constitutionality.

Then the War came on, and the Government took over the operation of the railroads. Now, there, for the first time when they took it over—now we say that the Government took it over, but what actually happened was that the Government took it over, and the managements of the railroads now worked for the Government and the employees worked for them just the same as before. They met, and discussed all of their labor questions from the point of view of maintaining peace and friendly relations and no interruption of commerce, but to further the purposes of the War.

Q Were the employees represented through labor organizations?

A Absolutely. I was coming to that. The orders issued by the Director General then laid out what in effect amounted to a labor policy, and they had regional directors, representing the carriers, and the representatives of the employees through their organization conferred together, and they entered into contracts.

They had national agreements covering the whole country for various occupations. That is, classes of employees, and then they had agreements by which they set up four adjustment boards to settle disputes as to the meaning and application of those contracts, one for the train service, one for the office workers, and maintenance of way and those people, and for the shop crafts, and another for miscellaneous employees, and so on.

Not only that, but the order was issued by the Director General, that employees had a right to organize, and there can't be any condition of employment that they shall join or not join a labor organization, and there will be no interference with them, and all of that, and that was issued and laid down as basic, and so on, and on that basis the labor relations were handled.

They also set up a Board on Wages and Hours, and a Labor Department or Division under the Director General, through whom all of these matters were handled.

Now, when the railroads came to be returned to the private carrier, the people began to talk about the importance of getting rid of interruptions of carriers, and making strikes impossible, and all sorts of ideas were thrown into Congress of how to do it.

Well, whenever people who are not familiar with the history, come in, they seem to think that if you could only have somebody to decide the matter, then the disputes will be settled, just somebody to give decisions.

Well, the net result was that the Transportation Act of 1930, Title III, that dealt with labor, I guess you are coming to that, set up a Railroad Labor Board, and three representatives of the employees, and three representatives of the carriers, and three of the public, and they had authority to decide all questions, the theory being, and some people advocated compulsory arbitration, but that didn't get or make much headway, but the theory being that if a Government Board representing all interests, hears the thing, and then makes a decision, you must do so and so, that even though obedience to the decision is not compulsory, that somehow public opinion would enforce it.

Well, that worked for six years, or didn't work for six years, but it developed dissatisfaction, and developed a very bitter strike in 1922, the condition developing dissatisfaction on both sides, so that in 1926, representatives of the carriers, and representatives of the brotherhood, formed a committee, and they drafted a draft which was the basis for the Railway Labor Act of 1926.

Now, the important thing about that Act is that that is for the first time where you get established the idea about Congress, that is now coming into our law for the other industries—it starts out, or the Act of 1926

starts out, that all disputes shall be settled—or first it starts out with the statement that it shall be the duty of the carriers and the employees to make and maintain agreements.

Now, what that meant was collective bargaining agreements, such as they had on most of the roads. Then it said, in making these agreements, and in settling all disputes, the carrier shall have representatives as determined by their corporate organizations, and the employees shall have representatives as determined by their unincorporated associations, and each shall be free from the interference of the other, and all disputes shall be handled in conference, with all expedition by these representatives of the carriers, and of the employees.

Then, if they couldn't settle it that way, any party might appeal to a United States Board of Mediation, similar to the present National Mediation Board, and then if these mediators couldn't settle it, then they might try to get them to set up an arbitration board.

Now, the whole basis that the employers and employees in this most important interstate commerce industry that there is, the whole basis of the Act, that disputes must be handled in conference by representatives, representatives must be free from interference one from the other.

The mediation must always be handled through these representatives, and you can't go and mediate or can't go out and meet hundreds of individual people, just as they can't go out and meet hundreds of stockholders, and if arbitration is arranged, these representatives which always, or practically always, means organization of employees, representatives of the carriers bind the organization, and bind the employees, and the carriers, to an agreement, and most of the disputes that are settled by the mediators are settled by what we call mediation agreements.

They sign an agreement that this and that will

happen. Then, if they don't, if our mediator can not so determine, then the mediator must attempt, and we must attempt, or this United States Board of Mediation that preceded the present Board, must attempt, to get them to enter into an arbitration agreement, and you have the terms of that arbitration agreement specified in the Act, Section 3 of the Act, and those arbitration agreements or awards then become enforceable by a federal court.

Now, in 1934, there was only—

Q What about the 1933 amendments?

A The 1933 Federal Emergency Transportation Act which set up the Coordinator of Transportation, and similarly the amendments to the Bankruptcy Act which set it up, provided a little easier method of handling bankruptcy questions. They had some provision guaranteeing employees rights of organization.

For example, while the law says that the employees shall have the right to have their representatives, and the employer or carrier shall have theirs, and there must be no interference, many of the classes and crafts of employees had weak organizations, or no organization, and always a good many of the railroads had these so-called company unions, especially in the shop crafts, which were set up after the shop craft strike of 1922.

If then a new organization of employees came to the employer and said, "We represent the majority of the employees," he said, "How do I know that?" And somebody else here is saying that they represent the majority of the employees, and there were constant disputes of that kind.

The general prohibition of interference by the employer with organizations of employees, and the prohibition of yellow-dog contracts that were similar to the statements in the Norris-LaGuardia Act, were included in this Emergency Transportation Act, and in the Bankruptcy Act, but in 1934 those things, plus the settlement of this question, when the employer says that "I don't

know whom you represent"—those were provided for in amendments of 1934, under which our Board now operates.

Otherwise, the law was not changed in essentials.

The United States Board of Mediation of five was abolished, and now our National Mediation Board of three was substituted for it, but it said, "Whereas, under the 1926 Act, if a dispute arose, one group of employees said, 'We represent the employees, or one organization,' and another came to the employer, and the employer said, 'I can't deal with any of you, I don't know who represents the employees,' or 'I prefer to deal with this one, and I think that this one is the proper one' "—that cause a lot of disputes.

The old United States Mediation Board could only handle them by agreement with the carrier, and if they could agree by mediation, and if they could get the carrier to agree by mediation to say, "Well, let us take a vote, you, the mediator, take a vote, and whichever organization gets the majority, that will be the representative" and then it would work all right.

Well, in those six years they only had about nine elections altogether on that basis, and there was a great deal of dissatisfaction, with fear that it might break out into a strike, or strikes.

So the Amendment of 1934 provided that whenever there was a dispute of that kind, either party to the dispute can appeal to the National Mediation Board, and it then makes an investigation, to find out who represents the majority, and of course—

Q Is the employer a party to the proceeding?

A No; it is considered a dispute among the employees, and the investigators may in the course of its investigation hold an election or use any other appropriate method of finding out whom the majority of the employees want.

The law says specifically the majority of any craft or class of employees shall have the right to determine who shall represent the class, or craft.

Now, the carrier is enjoined to keep its hands off the selection of representatives of the other side, and all he is required to do, he gives the pay roll—gives our mediators access to the pay roll, to make up the eligible list, and he often lets them use his facilities for voting, and then we have the elections, or we check authorizations or use other methods and then we certify the representative to the various parties that were in dispute among the employees, and we tell them who has the majority and who is the duly designated representative of this craft of employees, and as a result of the investigation, and then when we certify that to the carrier too, then the carrier is required by the law to treat with those representatives certified by us.

Now, that is the essential change. It really is not a a change in the law, but it is merely to carry out what really was there in the beginning but there were no facilities for doing it because you had to get agreement before you could hold your election.

Q Do the 1934 amendments to the Railway Labor Act provide for any penalty upon employers who commit any of the acts that are prohibited by the amendments?

A Yes. Section 2 of the Act has a series of clauses which prohibit interference by the employer with the representatives of the employees, and prohibit pretty much in the same way the sort of thing that is prohibited in your Act, such as the unfair labor practices, only they are not given that name, but the same provisions are there, with a few additional ones. Well, I guess they are the same.

The employer may not deduct dues for a labor organization, or assist them financially, and that is the same in the Wagner Act.

What it then does is to provide for violations of certain of those becoming a misdemeanor, and are subject to fines or imprisonment, or both.

Q In that respect the Railroad Labor Act differs from the National Labor Relations Act, in that the National Labor Relations Act provides for no criminal penalties?

A But only in part. Now, not all of the prohibited things or not all of the things required have penalties attached to them, and the others have no penalties, and the question has come up, what is the remedy.

We had a case, for example, on the Virginia Railroad, where the employer refused to recognize a certification that we had made as to who the representative was, and they continued to deal with a company association, after that.

Q You mean a company-dominated union?

A Well, we don't know that it was company dominated, and no such charge was made. It was the defeated party in the election, and they had been organized originally by the company, perhaps, but the party that had won the election, and whom we had certified, went into court, and asked for an injunction to prohibit the carrier from dealing with this defeated association, and asked that they deal only with those that we had certified.

The carrier answered that there is no penalty in the law or nothing said about that. But the judge, in the District Court of Virginia, ruled, saying that he followed the text of a New Orleans case decision, citing that as his precedent, that even though there is no remedy provided in the law, that an equity court will issue an injunction to enjoin them from treating with anyone else but what the law provides. The law provides that they shall treat with the representatives certified by the National Mediation Board, and he so issued the injunction.

So that there is that kind of remedy, and in that sense it is not much different from your Act, as I see it. Your Board here is the first and then it would be enforceable by the court.

Q Are you familiar with the provisions of the present National Labor Relations Act?

A Well, I know it fairly well, but I wouldn't say that I am familiar with all of the details.

Q In so far as the National Labor Relations Act prohibits employers from certain acts in their relations with employees, in what way is it different from or similar to the prohibitions of the Railway Labor Act, as amended in 1934?

A Essentially, they are the same. There are some minor differences. I don't know that I can tell you all of those minor differences, but it is the same prohibition of dealing, or discrimination on account of union activities, or making a condition of employment membership in the organization—essentially the same. There are a few differences.

I would want to compare the exact language before I pointed those out.

MR. SMITH: May I interrupt?

Has the provision in the Railway Labor Act that the employees may not interfere with the employers' organization any practical value?

THE WITNESS: Well, it merely says neither party shall interfere with the representatives of the other. Of course, the employees don't ordinarily, and they have no way of interfering with the employer representatives.

MR. SMITH: Is there any case on record where they have attempted to so interfere?

THE WITNESS: Not that I know of.

BY MR. WIRIN:

Q Has any situation ever been called to your attention when employees sought to coerce employers in their relations with other employers?

A No.

Q Now, you have shown the essential difference in the 1926 Railway Labor Act, in its provisions, from similar labor legislation.

Now, let me ask you whether or not an experience on the American railroads—I will withdraw that—

The Committee asked you what has been the experience on the American railway Labor Act, in so far as it prohibited employers from performing certain acts, has tended to maintain peace on the railways, or led to unrest and strikes?

A I am not sure that I get your question. I think that the purpose is obvious, and it has been up in the court several times.

The purpose of Congress is to make each party free in its designation of its representatives. Now, it prohibits the common practices, where the employer tended in the past to interfere, and all of that is done for the purpose of making them free.

Now, in that connection, a decision was just issued last week in the United States District Court in Kansas, for the District Court of Kansas, the First Division, an opinion by Judge Hopkins. That is where some of the provisions, for instance, the financial provision, where the employer deducted dues for a company organization that they had actually formed originally, that was the question at issue, and the law prohibits that, and that is interference on the part of the employer.

The judge ruled in this way: The intent of Congress is to prevent interference and influence, and the question was that Congress had the right to prohibit a lot of things that commonly occur, as interference, and here is what the judge said in his finding of fact:

"The acts of the railway in directing its operating officers to circulate petitions among the employees for the purpose of organizing the association"—that is what is commonly called a company union—"and its declaration that the association proposed to be formed would be the only organization the railway would recognize, its requirement of new employees that they join the association, and its requirement at the inception of the association, that was later abolished, that

employees specifically contract not to become members of any association, or any other association of employees, the acts of the officers of the railway in assisting in the formation of bylaws of the association, and the character and provisions of the bylaws, the acts in compiling information respecting to membership of the employees in the association, and its inauguration with the officers of the association of the plan of deducting dues from the wages, its act in assigning an officer with the title of supervisor of welfare,"—that is another one of these "personnel managers"—another name for them—"to keep in close contact with the affairs and activities of the association, and the acts of such supervisor in this respect, and its acts in general as portrayed by the evidence in the case, constitute and are tainted with the element of influence, interference and coercion, ultimately affecting the freedom of action of the employees in matters relating to collective bargaining, and I so find."

Now, what does that mean? The law wants them to be free, and why does it want them to be free? Obviously, you can't have bargaining, and you can't have contract-making, and you can't have peaceful relations, setting up of the agreements, and then interpreting them by judicial arbitration board, unless each party is bona fide an independent party, and not with one party playing it on both sides.

And therefore, the law prohibits that, and here the court lists some of the things that this company did, which interfered, and all I can say in answer to your question is that the experience has been that this type of interference prevents this relationship, and therefore tends to encourage strife, strikes, and so on, and Congress is prohibiting that for that reason.

As a matter of fact, since the Act of 1926 was established on this basis, there have been practically no strikes in the railroad industry. There have been a few little ones, that the Board didn't even take notice

of,—they didn't interrupt commerce, and perhaps three in all of these years, involving a very small number of employees, and one a so-called illegal strike, where they went out contrary to the orders of their organization, and the organization ordered them back to work.

All of the disputes, hundreds of them, thousands of them, are settled as the law said, in conference between the representatives of the carriers and the representatives of the employees, duly designated as provided by this Act.

Now, that isn't a guarantee against strikes, and there have been strike threats on many issues, and strikes may occur, but you have the picture now, a very important picture of all of the railroads, or practically all of the first-class railroads of the country, and their representatives, and the representatives of any one railroad labor organization meeting here, in New York, or Chicago, adjourn their meeting to discuss what? To try to arrive at an agreement like this, to provide for the most important problem we have, unemployment, and they consolidate railroads, which is needed in the interest of efficiency, and economy, and men are often displaced, and the employees don't like to be displaced any more than the investor likes to have his investment just junked without him being paid for it, and so these organizations on both sides are trying to arrive at an agreement that will avoid the necessity of legislation on that question.

There is a bill in Congress on the same question, but both are actually trying, if possible, to settle matters in this way.

That is possible, and it was possible to reduce wages during the depression, and restore them again on the railroads throughout the country, when the period of recovery came on, in an orderly way, without strikes of any kind, whereas in all of the other industries, practically, they had all sorts of strikes. Why? Because this method of guaranteeing freedom to both

sides, and of bargaining collectively and meeting together, each side recognizing that the other people have a right to have business representatives talk to them, and that is an orderly method of dealing with the question.

As I take it, Congress having found all of this experience, is trying to apply some of it to the other industries engaged in interstate commerce.

MR. WIRIN: I wonder if at this time we might adjourn until tomorrow at ten o'clock, because some other witnesses have to be interviewed at this time, and it would be more convenient.

Dr. Leiserson has kindly consented to return at ten o'clock.

THE WITNESS: I hope you haven't much time.

MR. SMITH: Have you finished with the railroads, Dr. Leiserson, as far as you know? I mean, is your testimony tomorrow to relate to the national picture?

THE WITNESS: I think I have testified about all I know now, so far as I am concerned.

MR. WIRIN: We think that there are further storehouse of knowledge Dr. Leiserson has, that we would like to tap tomorrow, but not concerning the railroads.

(Whereupon, at 5:00 o'clock p. m., an adjournment was taken until 10:00 o'clock a. m. tomorrow, Friday, April 3, 1936.)

O'Neal Bourne Cyl 1

SECOND DAY

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Washington, D. C.

In the Matter of Wheeling Steel Corporation and N.R.A. Lodge No. 155, Goodwill Lodge, No. 157, Rod & Wire Lodge No. 158, Golden Rule Lodge, No. 161, and Service Lodge No. 163 of the Amalgamated Association of Iron, Steel and Tin Workers of North America	Case No. C-3
In the Matter of Jones & Laughlin Steel Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Local 200	Case No. C-57
In the Matter of Crucible Steel Company of America, Spaulding and Jennings Works and Strip Steel and Wire Workers Union, Local No. 20084, A. F. of L.	Case No. C-67 II-R-4

406 Denrike Building,
1010 Vermont Avenue, N. W.,
Washington, D. C.,
Friday, April 3, 1936.

The above-entitled matters came on for hearing at 10:00 o'clock a. m., pursuant to adjournment.

BEFORE:

J. WARREN MADDEN, Chairman;
JOHN M. CARMODY, and
EDWIN S. SMITH, Members of the Board.

APPEARANCES:

ROBERT P. WATTS
THOMAS I. EMERSON
A. L. WIRIN

Appearing for the National Labor Relations Board.

EDMUND M. TOLAND
Attorney for the General Council and Departmental Councils of Wheeling Steel Corporation.

PROCEEDINGS

CHAIRMAN MADDEN: Are you ready to proceed, Mr. Wirin?

MR. WIRIN: We will recall Dr. Leiserson, who was on the witness stand at yesterday's adjournment.

CHAIRMAN MADDEN: Very well.

Whereupon

WILLIAM M. LEISERSON

was recalled as a witness for and on behalf of the National Labor Relations Board and, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WIRIN:

Q Yesterday afternoon I thought we had concluded with the railways, but I discovered I had not asked you about the experience of the railways in holding elections of employees. Have any elections been conducted among the railway employees?

A Yes, a good many since the amended Act was adopted in 1934.

Q Can you tell us approximately how many such elections were held?

A Well, during the first fiscal year, that is, ending June 30, 1935, we had ninety-six representation disputes. In not all of them were elections held—as I recall it, only about fifty-three. In the others we used other appropriate methods, such as checking authorizations of the employees, their signatures against the payroll signatures, and establishing the majority that way.

Now, since July 1 and up to January 1, the total under the amended Act is roughly 150 representation disputes, involving about 120,000 employees.

Q Please state whether or not in your experience and the experience of the National Mediation Board you have discovered that an election by secret ballot is a device for the allaying of industrial unrest, or whether it is not.

A Well, certainly on the railroads, to speak about them first, the situation is this:

The law says if a dispute arises among the employees, the Board shall investigation upon petition.

Our experience has been that when there is a question among the employees as to which organization shall represent, you want to know in practically all the cases—the organization acts as a representative, although an organization of the employees acts as representative—although the law says individuals or organizations may

represent. We have never in all our experience certified any individual or had occasion to do so; it is always an organization. But when the employees are disputing as to which organization represents, there is a great deal of unrest on the property. Try as they will, they can not avoid discussing the things in working hours. It may start during the lunch hour and then continue, with a good deal of disturbance and so on.

When, however, we come in and conduct the election and issue a certification, that settles it. And the certification by the Board that such and such an organization represents the majority of employees of this class, the employer then deals with them, makes agreement with them, handles grievances through them, and thereafter all of that disputing and unrest is gone.

In that sense there is no question that an enormous amount, not only of unrest but of disturbance of the operations and efficiency of the property, is avoided when we get the thing thus settled once and for all.

We often have management say to us that they are not interested in the dispute, because the law requires them not to be; but they would like to get the thing settled, and we run off the election and settle it for them.

Q Let me ask you whether or not in your general experience with respect to elections in industry, other than the railway industry, your opinion is the same and your experience is the same?

A My experience has been the same, whether it is in that industry or in other industries. When I was with the Petroleum Labor Board or with the original National Labor Board, we found the same situation, with this exception:

If the employer were willing to accept the certification and abide by it, then that unrest and those difficulties disappeared.

If, however, the employer still said, "Well, we have got minority here who did not vote for the majority, and I don't want to deal with the majority without

also dealing with the other", then you had a whole lot of other disturbances.

But the employer accepted the certification of what the majority was, usually determined by secret ballot, then the dispute and unrest disappeared.

Q I take it, then, that your experience on the National Labor Board and on the Petroleum Labor Policy Board, differed from your experience on the National Mediation Board in that in respect to the former Boards there was no machinery of law or authority of law for the enforcement—at least for the efficient enforcement—of the rulings of the two former Boards?

A Yes; in this sense it is true. For example, when we certified a certain representative—and perhaps I told you this yesterday—on the railway, like it came up in the Virginian Railway, and the employer attempted to deal with the organization that represented the minority, that lost the election, the organization that was certified under our law as representing the majority went into the Federal Court and the Federal Court said that their right to bargain collectively was a property right and would be injured by the company dealing with the other; and they got an injunction enjoining the carrier from dealing with this other association that had lost in the election. That then settled the thing, and I am glad to say that on the railrods generally we have very little difficulty in that. The carriers tell us, "Come in and certify to us who is the real representative. We don't care whether you are holding an election or checking authorizations. When we have your certification we will treat with those representatives and know that we are following the law."

Q What was your experience while on the Petroleum Labor Policy Board with respect to discharges of employees for union activities? Were there any complaints of such discharges?

A When the Petroleum Labor Policy Board began

to function—in fact, the reason it was formed at all—it was became the administrator of the code received an enormous number of complaints, running up into the thousands, that the labor provisions of the code were not being carried out.

Now, some of those complaints had to do with the wages and hours and they did make provisions originally or at first by having the Code Authority look into those, and those did not bother them so much. But those that had to do with the right to bargain collectively and being represented by representatives of their own choosing, they could not let the Code Authority enforce those provisions, because the Code Authority was made up entirely of employers.

In a few cases where they did attempt to do it, the experience, as the administrator found, was that the Code Authority did not pay any attention to the complaints.

So the Administrator found it necessary to set up a Board of his own similar to the National Labor Board, operated for the general codes that were under the National Recovery Administrator.

The Petroleum Code was transferred from the National Recovery Administrator to the Department of Interior, so that the Secretary of the Interior acted in place of General Johnson, let us say. Now, he then found it necessary to set up this Board.

When we began to operate January 1, 1934, we found several hundred, at least, complaints, of two varieties: one, that the employer refused to deal with organizations of employees when they represented a majority; and, second, that a lot of men were discharged or discriminated against for one reason or another, when they would try to set up an organization or when committees of an organization went to see the employer, and they would be discharged for union activities. We had many of those instances.

The Board attempted to investigate those and wher-

ever possible to get the employer to reinstate the people who were discharged where it looked as if it was done for their union activities. In quite a few cases we succeeded in doing that. In others we actually had to make decisions, ordering the reinstatement of the people. In many we had to run elections.

As long as I was connected with the Board, about eight months, from January to August, we ran about fifty elections, or settled fifty representation disputes by elections or by checking authorization.

Q Now, Dr. Leiserson, was the personnel of the Board a bi-partisan or impartial?

A It was made up of three neutrals.

Q Did you find that many of the complaints by workers, alleging acts by employers interfering with their activities, were true in fact?

A Oh, yes. It is a difficult thing to establish proof that men were discharged or discriminated against for union activity only. In almost all cases there were a lot of surrounding circumstances. We found some cases where it was obvious, as I recall one decision. We said that, considering the evidence, there could not have been any other reason for this discharge, considering the record of the man and so on, except his union activities.

But usually the case was mixed up with the employer having sent somebody to attend the union meeting or to sit outside the union meeting as the men walked in and check off who was there, and with calling meetings of the employees and making talks to them as to which organization was better.

Usually there was found to be a set of circumstances pretty much like that that I read yesterday from the Decision of Judge Hopkins in Kansas, showing the things that the employer had done to interfere, influence, or coerce; and, incidental to that program the discharges happened to be there also. Wherever you had that, it was easy to establish that the discharges were just part of the program of interference.

Q Now, in one of the cases that is pending before the Board and in which testimony is being taken now, namely, Wheeling Steel Corporation case, there are allegations that the Wheeling Steel Corporation engaged in unfair labor practices in financing and sponsoring a company union.

Did you find in the course of your experience on the Petroleum Labor Policy Board that employers engaged in such practices?

A Yes. That is a universal thing. It was found on the railroads, and that is why Congress prohibited it by express statute, these amendments of 1934.

This Decision of Judge Hopkins that I read yesterday involved a case where the employer undertook to assist the company union by deducting from their wages dues and turning it over to the union, and then the list of the members be given to the master mechanic or some other official, so that they would know just who belonged to the company union and who did not.

That is a universal practice in all the industries that I have come in contact with where they have attempts at interference with the employees' right to organize. And so in the petroleum industry, one of the first cases we had—I think it was Case No. 2—the Magnolia Petroleum Company, the employer set up the representation plan. It was devised by attorneys for the company and by a personnel manager they had. Then they called for election of representatives, and then when the representatives were gotten together, they met—in Dallas, Texas, as I recall it—and the expenses of the meeting and the transportation and everything were paid for by the company.

The officials of the company were present at the meeting. The plan was presumably adopted at this meeting, which was attended not only by representatives of the employees but by an equal number of representatives of the management.

Then certain questions came up. The main question

came up at this meeting where some twelve representatives of the employees demanded that a phrase be put into the plan that would reproduce what was known as Section 7-A of the National Industrial Recovery Act, guaranteeing the rights of the employees.

The personnel manager for the company said that was not necessary, that "This is better than collective bargaining; this is the golden rule." Those were the words that he used.

But at least twelve men insisted, and there was a good deal of discussion about it and apparently sentiment for including, and so the meeting was adjourned for lunch. At lunch they had the president of the company, the general counsel of the company, and the vice president addressed a dinner of all these representatives.

Q Do you know who paid for the dinner?

A Oh, yes. The evidence is that the company entertained all these representatives.

All the leading officials of the company were there. That was in the evidence.

Then when they got back in the afternoon, the request of putting in Section 7-A was withdrawn.

Now, the Board found on the evidence; it raised two questions as to whether under that Act, that Section 7-A, first, the employer had a right to set up a plan like that for the employees, to get it established not by the employees voting for it but by the employee representatives, the management representatives, to adopt it, never referring it back to the employees for their opinion, and so on. And the Board held that that was in violation of Section 7-A.

The second question was that the employer claimed that this plan was a contract, and so you could not have a new election with new representatives. The Board held it was not a contract.

The company appealed the case over the Board to the Administrator. The Administrator appointed the

Solicitor of the Department to hear the appeal, and he went over the legal question and so on and he upheld the decision.

But that is a typical example of what has happened with the organization of these company unions. No personnel manager really denies th . that is what they are doing. They claim it is better for the employees than if the employees had their own o ganization.

But no company that sets up this company organization will really deny that the facts are any different, and the same things happen in all such cases.

Q Now, did the National Labor Board, the Petroleum Labor Policy Board, and does the National Mediation Board, draw a distinction between a company union and a company financed or sponsored union?

A Well, this term "company union" is very confusing. Many people define it as a union confined to the employees of one company. A union confined to the employees of one company is a perfectly legal and perfectly sound organization, if the employees want that.

If the employees want to organize that way, that is their business; and there are a good many bona fide organizations of that kind. The only disadvantage of it is that it is likely to be weaker than if it were a brand of a national organization. And such unions soon discoved that, and although they may be organized first within a company, they will join with some national organization after they are in existence a short time. But that is an organization of employees that happens to be confined to the employees of one company.

What is ordinarily meant by a company union is a union sponsored, encouraged, financed, and dominated by the company. Now, that might not include the employees of only one plant. It might include the employees of a dozen or more plants.

The issue is, if you use the term "company union," it should be defined; and what is bad about it is that

it is dominated, financed, and controlled by the employer, which means that he is interfering with the freedom of the employees organizing their own organization or choosing their own representatives.

MR. SMITH: More than that, is it not true that the structure of many so-called company unions or employer representation plans is such as to make the process of collective bargaining, as we have traditionally understood it, difficult?

THE WITNESS: Yes. Many things are referred to as company unions that are not unions or organizations at all. For instance, in many plants the employer announces that he would like to have better channels of communication with his employees, and so we will have every department or certain departments elect representatives. There is no organization, no dues, no meeting of those organizations. Once in one, two, or three years, there is this election. There is really no responsibility of the representatives toward their group. And so those ought not to be called company unions, because they are not unions; they are not organizations at all. There are many instances of that kind.

BY MR. WIRIN:

Q When you use the phrase "company union," you are refering to those groups that exist for the purpose of collective bargaining?

A Yes.

Q Now, what was the experience of the three governmental agencies that you have been a member of, namely, the National Labor Board, Petroleum Labor Policy Board, and Nation Mediation Board, as to whether or not these practices of employers which you have been describing, in the form of interference with employee activities, through company financed unions—what has been the experience in so far as to whether or not these practices lead or cause unrest amongst employees?

A There is no question that if there is anything that the employees resent more than anything else, it is when they are trying to exercise their right as American citizens to associate themselves for their common benefit. It is supposed to be a liberty of individuals, not only to act as individuals but to act in associations for legitimate purposes, and that when they want to exercise that, the employer insisting and complaining against the government interfering with his liberty, the employer insists that his liberties include the interference with the employees' liberties to associate. There is nothing that I know of that makes for more bitter resentment of employees against employers than that. And it goes on the theory, the theory of the employer, that his interests and the interests of the employees are not the same, because if he though they were the same, he would of course say, "All right, you go and elect your own representatives; I will elect mine, and we will work together." But he does not act on that at all. If he would not interfere with his employees. He is afraid that the moment they organize there will be a conflict of interest, and that he must control it.

Now, the experience is universal that the employees resent that more than anything else, and more than that. When the representatives of the employees, the active members, the committeemen, get their heads chopped off, as they say, that is they get fired or transferred or disciplined, or some other way, then every employee becomes frightened—frightened because he attended the union meetings, he is sympathetic with the movement, and his head is coming off next. And that is what causes more bad relations than any other single thing that I know of. And that is quite aside from the right of the employee that he ought to have for himself, regardless of whether their interests are in common or not.

There are many things on which the buyers and sellers interests are not the same. Regardless of wheth-

er they are or not, they have a right to act for themselves without the interference of the other party.

You will find in the decision of Justice Hughes in the Texas and New Orleans case that he said that Congress recognized that they wanted to promote friendly relations and that the best way to do that was to have the free representatives of both sides get together, and there was no reason why Congress may not do that, many not promote cooperation that way, through the representatives of both parites.

Now, you will find—to show you just how universal this is—you will find that when the amendments, the 1934 amendments, to the Railway Labor Act were before Congress, Commissioner Eastman, the Federal Coordinator of Transportation, appeared before the Congressional Committee. He had recommended this legislation, and he described the practices of company unions—and the practices on the railroads are no different from what they are, I am quite sure, in your case.

Now, in this decision of Judge Hopkins that I mentioned before—

CHAIRMAN MADDEN: (interposing) That was in the Federal District Court?

THE WITNESS: Yes, the Federal Court for the District of Kansas, First Division, the Association of Rock Island Mechanical and Power Plant employees against Frank O. Lowden et al, Trustees of the Rock Island and Pacific.

BY MR. WIRIN:

Q Is that the Lowden who was candidate for President of the United States?

A Yes. He quotes Mr. Eastman's testimony, and the Court says:

"Speaking of influence inherent in certain company union arrangements, he (Eastman) said:

"You must realize the influence

> which a company is able to exert over its employees, if it cares to use it, particularly in a time when jobs are not to be had for the asking. It is like the power of life and death, for it means the power to deprive a man of the very means of subsistence. The influence may be exerted at the time when a man wants a job, by making him agree to limit his freedom of choice in the matter of of labor organizations, or it may be exerted after he becomes an employee, by instilling in him the fear that if he does not do as the company wishes, he may lose his job. Bear in mind that there are any number of plausible reasons which may be conjured up for demotion or dismissal, and that the real reason need not to be brought out into the open. In addition to this use of fear, which is a most potent instrument of influence and easy to employ, there is the hope of gain. This is utilized by paying the salaries of officers or in other ways meeting or helping to meet the expenses of favored organizations and extending concessions of this sort to them which would not be extended to other organizations which are not 'favored."

Now, Mr. Eastman had made very elaborate investigations of the company unions on the railroads, and he went on to say:

> "In the investigations which my staff have made, I have gone rather exhaustively into this matter, and I entertain no doubt whatsoever that the chief reason why railroad managements prefer so-called 'company unions' is because they can more readily influence their policies and management than would be the case with national organizations. I do not mean necessarily

any sinister influence. They may feel, and I suppose they know what is for their employees' own good. However, they ought not to be the ones to decide what is for their good.

"It is a fact, also, that the railroads have in the past played a large part in both the initial organization and the subsequent operation of company unions."

Now, that is taken from the hearings; and the court quotes from the hearings before the House Committee on Interstate and Foreign Commerce, on H. R. 7650, on May 22, 1934, at page 23.

CHAIRMAN MADDEN: This language is quoted with apparent approval by Federal Judge Hopkins?

THE WITNESS: Yes. In this case I may say, where I quoted from the case yesterday, where the Judge listed all of the things that he considered improper influences, and therefore prohibited the company for helping this company union by deducting its dues, that was the issue.

Now the Court goes on to say that Mr. Eastman, in further speaking before the Senate Committee on the same practice, stated:

"When employees are dealing with employees, the situation is quite different than what it is when companies are dealing with employees. Companies have power over the means of livelihood of the employees, and that is where the danger lies. Advice from a boss may easily become coercion if the impression is in any way conveyed that failure to follow the advice may threaten the standing of the employee with the company. It is like advice for a man with a six-shooter pointing at your head. Employees have no such power over each other.

"When it comes to the organization of employees, it is entirely appropriate and proper that argument and electioneering should be allowed. Contending factions may misrepresent in their arguments, just are Republi-

cans and Democrats do, but each side may be relied upon to expose the misrepresentations of the other."

Now, that the Court quotes from hearing before the Senate Committee on S-3266, April 19, 1934, pages 148 to 149.

CHAIRMAN MADDEN: That logic, again, is apparently approved by the Court?

THE WITNESS: Yes. As a matter of fact, Mr. Chairman, while this was made after a very exhaustive investigation, made by the coordinators staff, information sent in and sworn to by the carrier, every one who was familiar with the development and purposes of company unions in this case knows that this is what happens everywhere.

When this information was laid before Congress, they adopted the amendments to the Labor Railway Act to prohibit these practices that here are described by Mr. Eastman.

BY MR. WIRIN:

Q At this point let me ask you this question: the National Labor Relations Act, as you probably know, does not contain any prohibition against employees from using any influence or coercion against other employees.

In your experience as a practical matter and in terms of economic realities, is there existing a problem which requires special legislation and prohibition in so far as prohibiting employees from using influence or coercion against his co-employee?

A The statement of Mr. Eastman answers that, I think, completely. The employees often misrepresent each other. When you get rather bitter fights, bitter disputes, once in a while an employee will punch another employee over an argument. But those are matters that occur in all elections—and in a general election, even, for a President of the United States—and those are matters that probably should be handled by local authorities to keep order. That is all there is to that.

CHAIRMAN MADDEN: Is it not true, Dr. Leiserson, that for those matters there is and has been for hundreds of years plenty of law?

THE WITNESS: Yes, there is plenty of local regulations. Sometimes the charge will be made that a labor organization in its campaign got out fraudulent publicity to win the election. Well, we have seen publicity that President Roosevelt is a communist and that he is following a communistic policy. Now, that sort of thing happens in elections. But that is exercising and perhaps abusing the freedom of people to try to get votes from each other, and insofar as it may be libel and fraudulent and so one, there are plenty of laws to take care of those things. That is not the issue in labor relations.

One employee can not have any power over another employee to make him vote one way or another, except if he has management authority to fire him, or refuse to hire him, or discriminate against him, or refuse to promote him. And therefore it is perfectly logical for Congress or for a legislature when it acts on the question to say, "There is no problem here as between the employees, because that is taken care of by legislation in existence and by police regulations."

The problem is of one party coercing the other party in the choice of its representative, and that is all that Congress deals with.

Now, we have found in all the elections that I have been in, no problem, as among the employees, that could not be handled by a competent mediator. Every once in a while outside the polling places there would be some pretty hot arguments, and the mediator will go out and say, "You had better quit that," and chase them away. That is about all the problem there is on that, and there isn't anything for Congress to do or to deal with in that regard.

BY MR. WIRIN:

Q In general, with respect to the activities of em-

ployees in their relations with each other, in your experience, is it necessary that there be Federal legislation to prohibit employees from exescising so-called improper influence or coercion over their co-employees?

A Not at all. The question as it sometimes comes up, the employers sometimes put up the argument in this way: when there is a dispute between two or more who want to represent the employees, then the employees will go to each other's homes to induce them to vote for this organization or for that organization. The employer feels that he should have the right to send his superintendent or his agent to go to the house of the employees in the same way.

But there is all the difference in the world when equals, who have a right to vote in the election, go to each other's homes to argue and convert each other, than when a person or a company, that has no right to choose these reprensentatives, sends one of its agents to presumably only argue with them. But an argument with your boss is a great deal more than an argument, and that is what the law needs to deal with, that problem.

The other is no problem. I can say from our experience that there has never been a problem of one set of employees intimidating another set of employees. There have been charges that they say false things about each other and about each other's candidates and all that sort of thing, but that is common.

Q Now, Dr. Leiserson, with respect to the bitterness and unrest which you have described among employees when employers commit certain acts which you have mentioned, does that bitterness and unrest sometimes result in strikes?

A Most strikes that come for organization purposes happen as a result of that, in this way:

When an organization is well established and has relationships with the employer, they hesitate very much about calling a strike, because it is likely to upset all the relations and the agreements they have.

Moreover, they know it costs money to support the strike. And so we will find practically every national organization prohibits a local organization from calling a strike by itself. It must get the approval of the national organization, and the constitutions of the unions provide that they must first exhaust their efforts with the employers, through committee and so on, and then if they can not get any further, they must inform the national organization, and the national organization sends a national officer to negotiate for it. Then, as the very last resort, they may or may not approve a strike.

But when the issue is whether or not a group of employees who have no organization before but have tried to have an organization, and the employers opposing it, then the usual thing is for the leaders to be discharged, or the committee that came to see the employer to be discharged or discriminated against.

Very often very many of the strikes we have had in the last few years are because the whole plant went out to support those few—often thoughtlessly gone out because they have not thought how they were going to be supported on strike, and how they were going to live.

But that illustrates the bitter feeling that they have and the resentment they have against discrimination against the leaders or active members, because they become so enraged and so fearful of their own job that a whole plant will walk out to support these few.

Very many of the strikes—I can not give numbers—but we have had in recent years, one after another, have happened in that particular way that I have described. Take the big rubber strike that just happened—I think about sixty people being involved—and they could not somehow settle that dispute. Then, when they tried to get rid of those sixty, the whole plant went out, and the city was tied up with all sorts of law and order problems.

They did not have any facilities for calling a strike,

no national organization with a treasury to support them or any of that, but they felt they had to support and back up those few men who were being picked on—and that has been the typical form of these unorganized strikes. Thus may I say that most of the strikes that have happened in the last two or three years have been this type of unorganized strike, rather than where an organization deliberately, after all efforts are exhausted, called a strike.

CHAIRMAN MADDEN: Your reference there was to the Akron strike?

THE WITNESS: Yes, to the Akron strike.

CHAIRMAN MADDEN: Of last month or so?

THE WITNESS: Yes, at the Goodyear Tire & Rubber Company.

BY MR. WIRIN:

Q Now, in your experience and the experience of the Boards of which you were a member and are a member, does the protection of law, or the right of workers to be free from these practices by employers which you have described—or, to put it differently, does the prohibition by law upon employers to commit these practices, tend to eliminate the strikes which are caused by the practices?

A Well, there is no question about that at all.

We don't on the railroads, with the exception of a few small, very small, roads in the South—the problem never arises of a man being discharged for union activity. It is not done. There are no such disputes on practically all of the railroads.

However, most of the bitter strikes of the past, the violent strikes of the 70's, 80's, and the 90's, were about those questions. If we have a threat of a strike now, it might be on a big fundamental question, like wages and hours, and we usually find we can settle those by arbitration or otherwise.

We have had threats of strikes recently, for instance, where certain wages that most of the railroads

had restored, one or two of the smaller lines that felt they did not have any money did not want to restore it, and we had a threat of strikes. That was even possible where the company was in the hands of receivers that we could settle those questions without strikes.

But if the issues involved were discrimination or discharge of men because they had the organization, or the question would be the right of the organization to represent them, we could not have settled those strikes.

Q Now, Dr. Leiserson, you referred to the opinion of now Chief Justice Hughes in the Texas and New Orleans case. Let me quote to you the following language of Justice Hughes from that opinion:

> "Congress was not required to ignore this right of the employees"—referring to the right to be free from interference from employers and the right to collective action—"but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife."

A Is that quotation that I had in mind before when I referred to Justice Hughes.

Q Yes. Now, Dr. Leiserson, in terms of the actual experience upon the railways since 1926, and since the decision by Justice Hughes, has the actual experience demonstrated that the protection of this right by Congressional action in the 1926 Railway Labor Act made collective action on the railways an instrument of peace rather than strife?

A There is no question about that, and the carriers as well as employees would so testify.

When I go out to mediate disputes and we get on that subject, the conversation would invariably turn on that question. In the old days we would not answer a letter that came from a union. Now we have learned to see that these men are just about like other men. They try to represent the interests of the employees, and we get along with them on a businesslike basis.

There is no question that the experience since 1926 and since the amended Act of 1934 bears out the purpose that Congress had in mind in maintaining peace through these methods and promoting good will, I should say.

Q Now the language of Justice Hughes in the Texas and New Orleans case referred, of course, to the railroads?

A Yes.

Q Is there anything in your experience which would bring you to the opinion that the experience of industries that are in commerce or whose activities substantially affect commerce would be different in so far as the recognition of this right by workers by law?

A No; I think the experience in the railroad industry is just typical of the experience throughout industry where collective bargaining was developer, and you want to know there are very many industries that have had that experience.

Professor Berman mentioned some of those industries. We have had them in the coal, we have had them in the clothing, we have had them in the foundry industry, we have had them in the printing industry, and we have had them for years in the pottery industry—in one industry after another. As soon as the question of the employees' fundamental right as American citizens is out of the way, from that time on the peaceful relations develop and the questions in dispute begin to be settled in a businesslike way, as business men settle their own disputes among themselves.

There is the right of working men to be considered busines men in their own affairs.

As soon as the employer recognizes that they have the right to be considered business men in their own affairs, and won't just take arbitrary orders for a foreman or manager, from that time on you establish over a large part of the field of labor relations peace and good will, and you eliminate the cause of strife.

Q Now, Dr. Leiserson, changing the subject for a moment, were you a member of the committee salected by the Twentieth Century Fund for the purpose of making recommendations with respect to the role of government in labor disputes?

A Yes.

Q Now, as I understand it, there was a committee of impartial citizens or persons selected for their interest and knowledge of labor relations, and then there was a research staff of competent experts who made the actual investigation?

A Yes.

Q And the publication is divided into two sections, one being the findings by the Research staff and the other or the last section being the recommendations of the committee, based upon the finding of the staff?

A It is not two sections; it is four sections, and part four contains these recommendations.

Q Now, were you here when Professor Slichter testified concerning the report?

A Yes.

Q I hand you what purports to be quotations from the findings of the Research staff, as distinguished from the recommendations of the committee?

A Yes.

Q Let me ask you first, was the Committee unanimous in its recommendations?

A Yes.

Q Now, I call your attention the quotations which are set forth in the the paper which I have handed to you and ask you whether or not out of your experience you concur in those statements as true statements of fact or opinion?

A These quotations are from the report that the staff submitted to the Committee, of which I was a member. We read that and went over it, and it substantially states what most of the Committee that were familiar with those problems knew to be true from their

own experience, and I should say that we accepted this—I certainly did—as a proper statement of some of the problems involved in the relation of employers and employees and the relation of the Government to those.

Q With particular reference to the quotation which refers to the inevitability—I think it is the first and second paragraph—the inevitability of Federal Government intervention in labor disputes, I take you concur in the findings as set forth in that quotation?

A Well, the government has always intervened in labor disputes. I don't mean by that that they have intervened in every dispute. But in labor disputes from the very beginning, the government has had a part.

I quoted yesterday from back in 1802. The government came in there as a prosecutor for conspiracy, and we saw apparently in the 40's that the government was coming in, because the matter was getting into the courts.

Now, some people don't think it is government intervention until Congress or a state legislature passes a law. As a matter of fact, early in the history of this country, as early as the first decade of the nineteenth century, states had to pass laws and some of them did, as to whether these labor disputes were conspiracies or not. That is government intervention. You can not avoid it and it is too fundamental a question for the government not to be in it.

Now, when the government intervenes in the sense of Congress or a Board coming in, you call that government intervention. But when, as in the early days, or prior to this, these disputes became things for police authorities or militia or judges to handle under common law, that is not government intervention. If you want to say that, why then you are just confused about the issue.

The government has always had to intervene in these, because they are important fundamental economic and social problems. And the time has come when

Congress sees that you can not let this go by different judges, differently interpreting common law on the thing, when the common law did not develop on the basis of modern labor relations.

And so statutes are now adopted to deal with them in an intelligent twentieth century way, and there is no question of the need for intervention.

However, this is true. If the government could do its real job, guarantee the right of wage earners as American citizens to associate themselves and keep employers who have power over these employees from trespassing on the right—to the extent that the government can accomplish that purpose, it will make less necessary direct government intervention in handling of terms of employment, such as hours and wages and other questions. Why? If wages are too low, as they are in these sweater industries where people are not organized and can not get the value of their labor through collective bargaining, then you have demands for minimum wage laws.

If they can not get decent hours of labor by associated action, then you have the demand and the fixing by government, and here you have the situation that I mentioned yesterday. There will be a demand—and there is a bill in Congress now—to set up a dismissal wage, when railroads are consolidated.

But here you have an industry where both parties are anxious to avoid that legislation and to try to settle it by an agreement through collective bargaining.

Now, government intervention has a great many disadvantages when a legislature or a state tries to deal with the details of the terms of employment and conditions of employment in industry: It is desirable to avoid that kind of action on the part of the government as much as possible. The best way to avoid it is to equalize the bargaining power of employer and employee and have them have respect for each other as equals. Then, when you do that, through collective bar-

gaining, you can avoid government intervention by statute fixing terms of employment.

Where people are not permitted or are unable to organize, you have more and more demand for intervention by the government by direct statute.

Q Now, in your opinion are the provisions of the National Labor Relations Act designed to do what you have just referred?

A Well, as I see the provisions of the National Labor Relations Act, it is designed to extend the protestions that are given to the railroad employees, to extend the same protection essentially to other industries engaged in interstate commerce. That is the way I read the bill.

Q Now, I call your special attention to Section 1 of the National Labor Relations Act, which contains the finding and the declaration of policy, and ask you whether or not in your opinion the findings in terms of your experience are true and the policy as declared by Congress is reasonably designed to effect the purposes of the Act as set forth?

A Oh, yes; and I think I can answer that by saying that I read this and I appeared before the Senate Committee and urged its adoption, because I felt that it was a proper statement and a desirable act.

CHAIRMAN MADDEN: Mr. Wirin, were you planning to do anything with that summary?

MR. WIRIN: I was planning to introduce it just after Dr. Leiserson was through. But perhaps I had better offer it in evidence now since the Doctor has identified it. Since the Chairman has raised some question as to whether the Board should take judicial notice of the entire Twentieth Century Fund Report, we have made quotations which we would like to introduce in evidence as the Board's exhibit next in number.

CHAIRMAN MADDEN: It may be admitted, and those are the quotations to which your questions of Dr. Leiserson a few moments ago referred?

MR. WIRIN: Yes, they are.

(The paper so referred to was received in evidence and marked as Board's Exhibit No. 28, Wheeling Steel Corporation; Board's Exhibit No. 71, Jones & Laughlin Steel Corporation; and Board's Exhibit No. 16, Crucible Steel Company of America.)

BY MR. WIRIN:

Q Now, just one more question, Doctor. In your experiences, as mediator, for instance, have you found commerce affected in any way in industrial disputes?

A Of course, on the railroads it is all affected.

Q Other than the railroads?

A Well, we had the question up, both in the petroleum industry and when I was with the original National Labor Board. Many employers would claim they were not engaged in interstate commerce. Of course, that is a question of fact in the case.

But it always seemed to me that the argument that was made in many of the cases, that the process of manufacture is not commerce, does not have anything to do with the case, Of course, if you looked upon manufacturing as a process alone, it has to be done in one place, and it is done within a state or a locality.

As I understand, the Supreme Court has ruled manufacturing is not commerce. Maybe I am wrong about it.

MR. CARMODY: That is not quite true, Doctor, is it? Is it not an actual fact that automobiles, for instance, could not be put on the market if it were not for the facts that parts are made in various states in the United States right now today and have been continuously?

THE WITNESS: Well, of course where the manufacturing in order to carry on the process, has to cross the state lines, it is obvious.

But the point I want to make it this. In handling labor relations we find ourselves in this situation. For example, we had a case in Hammond, Indiana, or East Chicago, Illinois, and when we went to deal with the employer in that manufacturing or refining company, we had to go to a man in New York. That is where the employer was.

Now, it seems to me that the relations between employer and employee, or the relationship between them, has to be inquired into these things as to whether it is interstate commerce or not. True the Clayton Act says that labor is not an article of commerce, and it is not.

But let me cite an actual example. There was a bitter strike at New Albany, Indiana, across from Louisville, a shirt factory, so bitter that the Governor of Indiana sent the Militia there, The company, of course, claimed that it was just a manufacturing company within the state, and I don't recall that this Board took any jurisdiction over it.

Finally the mayor of the town got the Militia out, and he offered an arbitration arrangement to the employer and to the employees. The employees accepted his proposal to arbitrate and the arrangement they would make.

The manager of the plant that was claiming he was engaged in intrastate manufacturing in Indiana, said "I can not tell you whether we can accept this. I have to send it to the headquarters of the company in New York and they will tell us whether we can enter into this arbitration arrangement."

Well, now, in my experience as an arbitrator I would not fuss with this manager in New Albany. I would say, "Now, who has final authority to settle this?"

I have had that happen again and again in such cases. I once had to settle a big gasoline station strike in Cleveland. We didn't go to Cleveland to settle this at all. I went to New York to meet the president of the company, where their headquarters were.

Now, when you have the employer, who has final authority to enter into an agreement, with headquarters in one state, and the plant over in this other state, even though that plant does nothing but manufacture right within the state—and, of course, if it had to run across state lines to manufacture it is clear that it is interstate commerce—but assume, for the moment, as in New Albany, all they were doing was making shirts right there. Even if the shirts were sold only in Indiana, which is not true, but even if it were true; but with the employer in New York, he is the one that fixes the wages and hours and everything else. Whatever the law may be on that, the fact in industrial relations and economics is that you have a situation that manufacturing can not be carried on except by communication and commerce between the headquarters of the company in New York and the little shirt factory in New Albany, Indiana.

Now, the argument goes on as if there were an employer in Indiana or New Albany; but there is not one. If there were one, then that is intrastate commerce. But when you have the employer with headquarters, we will say, in Pittsburgh, and plants in West Virginia and Ohio and so on, and the orders come from Pittsburgh, I should say that manufacturing in West Virginia and Ohio and so on, and the orders come from Pittsburgh, I should say that manufacturing in West Virginia and Ohio can not be carried on except as orders come from Pittsburgh. And from the economic and labor relation point of view, that is interstate commerce. Now, what the law is on that I don't know.

A It is very common in the larger industries. All you have to do is to see a report of the United States Census gotten out a few years ago that is called the "Intergration of Industrial Process." It is confined to manufacturing and mining, and it shows how that integration is carried out. And it shows how a headquarters in New York control plants in very many states.

Well, we have the same situation even in railroads.

We have a few little industrial railroads that are carriers, within the law. When we have to deal with the employer, the manager of the railroad is not important and we go to the personnel manager of the manufacturing company, either in New York or some other place, to get the agreement with him to negotiate with him, because he controls it.

Now, any one who is familiar with industry at all that is carried on in large offices in central places. The plants are scattered over the states. The manufacturing in those states can not go on without an order from the central office where it is all planned. There is a planning department, and the orders go over there how to do it. The wages are not fixed in the manufacturing place. The wages are fixed in that central office.

Q Is the labor policy determined in the central office?

A The labor policy is determined there. And when you have that sort of a situation, if it should be held that that is not commerce, you have this, I should say, anachronism or conflict between the facts and the law.

When a strike occurs and I or another mediator has to go to settle it, and the strike is at a particular place, the employer is not there and we have to go either to another state to find him and deal with him there, or elese we have to call him from there down to this other place.

Now, if business is carried on with the employer in one place and the employees in another place—that is the way it is carried on.

This Board is a National Labor Relations Board. Our Board is a labor relations Board. What do I mean "labor relation?" The relation between the employer and the employee.

Who is the employer? The one that was final authority to set wages and hire and fire, and set the policy or the terms of employment. Those are the relations with which we are dealing.

In most of these large plants the personnel manager who carries out the corporation policy is not at the places where the manufacturing is going on, in the sense of the detailed making of things. He is at some central office determining the policy, issuing the orders, and whenever a labor relations problem comes up within one of these plants in a locality, one of two things has to happen. Either we have to go there across the state line to get it settled, or the personnel manager has to go over there.

Let me give you an example. One of the first company union plan was the International Harvester Company. Now, the International Harvest Company had its office—or it had when I looked into this thing, and I was quite familiar with it in the earlier days—on Michigan Avenue, in Chicago. They set up a representation plan that was worked in the Michigan Avenue Office. It was the taken by a director of personnel or industrial relations, who handles labor relations for the management. It was taken to one plant after another of the International Harvester Company—some in Illinois, some in New York, one down in New Orleans, one in Canada —and they asked the employees to vote on it. Most of them voted on it and accepted the plan and set up representatives.

Then the representatives from all these individual plants scattered all over the country set up what they call an industrial council of the fifteen plants, we will say there were.

Now, the personnel manager or director of industrial relations of the International Harvester Company would travel from week to week to the meetings of these representatives at the various plants.

When wages had to be fixed, they were fixed on Michigan Avenue for the twine plant down in Louisiana, and when wages were to go up or if they were to go down, and whether a policy as to promotion, training, and anything else, or what terms of employment were to be fixed, that was all done in Chicago.

If you look upon making twine in New Orleans as a process, why that is done in the State of Louisiana. But if you look upon the International Harvester Company making twine in Louisiana, it is the International Harvester Company in Chicago making twine in Louisiana, and it can not make it any realistic way except as commerce among the states. It cannot operate its labor relations except as commerce among all the states in which these fifteen plants or the foreign country is located.

That is why I think it is a mistake to talk about the process. The process is mechanical and not human. Labor relations are relations between human beings. Why even in you lawsuits, is one man is a citizen of one state and another man is a citizen of another state, you recognize that is a Federal question and then you can refer it to a Federal court, as I understand.

Well, when you have got a dispute, we as a mediator or a labor relations man, it is the same situation as with the judges in the courts. You have got a dispute with employees in one state and employers in another. The relation is among them. You cannot settle those disputes by remaining in one state. It is a Federal question in the same way as you have it in transferring cases on account of diversity of citizenship to a Federal court.

Q Well, you have answered my last question very fully, Dr. Leiserson. That is all the questions I have, thank you.

A Well, I would like to make one summarizing statement.

CHAIRMAN MADDEN: I want to ask one question, and perhaps I should do it before you sum up. What is the effect of such protection as workmen on the railroads get under the statutes which you administer? That is, protection with reference to right to unionize and not to be discriminated against, and so forth, what effect does that have upon their efficiency and their sense of responsibility to their jobs and do the people who are intrusted to their safety?

THE WITNESS: That, of course, is a very difficult question to answer. Too many factors enter into the situation as to what makes or does not make for efficiency. But this may be said. All of the irregularities of the methods of handling labor relations cause a great deal of disturbance, and they also cause soldiering and laying down on the job when their grievances are not properly handled. I am familiar with that because I was connected with an investigation that was made about restriction of output in unorganized plants, in plants where there were no unions. We found universally—and I may say that the report was published under that title, "Restriction of output in unorganized plants," under the authorship of Stanley B. Matthewson, published by the Viking Press a few years ago.

Now, it was found there that when the employees were unorganized and dissatisfied, their grievance is not taken care of, that they soldiered on the job. They fixed the limit beyond which they would not produce. There were some rough estimates attempted in the book as to how much in the way of losses that made to the industry in increased costs.

Now, when you have collective bargaining, that sort of individual guerilla warfare on the part of the employees—who are helpless in protecting themselves in any other way except by laying down on the job—that disappeared and it comes out in the open. For example, in the clothing industry, standards of production are set, indicating if a man is to get the standard union wage he has got to produce for it, and when he does not, he is disciplined by the organization. Now that is the second part.

When you have employees in an association, you have through their officers a responsibility of all of the employees for meeting their obligations under the agreement, and you get a certain esprit de corps which is appealed to by an officer when the man is not doing the work he ought to do. And in the sense of that kind of

responsible organization co-operation with the management, when they go into health and safety work or in sanitation work or in improved output, or anything like that, you get very much more efficiency than you do on the basis of individual bargaining.

I understand Mr. Beyer will be here. He was able to work out on the Baltimore & Ohio Railroad a plan for cooperating for improved efficiency, but it could not be done until all the grievances were out of the way under the collective bargaining arrangement.

Similarly, in conclusion on that question, the T. V. A., the Tennessee Valley Authority, found itself with a big problem of hiring great numbers of employees, and with the problem of how to manage them. It, of course, guaranteed the right to these people to organize; but it felt that just leaving it that way was not enough, So it made a study of the best management of labor relations that it knew about. It called in experts to find out about it, an then announced and printed a Tennessee Valley Authority labor policy, which not only sets down the actual right that is in your law and in our law, but goes on from there as to what is intended in a concrete way.

And so, for instance, when it needed to revise its wage schedules and so on, it called in the representative of the employees and they have had some very fine meetings, the president or the chairman of the T. V. A. told me.

In some cases the men agreed that certain people were overpaid as compared to others, and their wages should be reduced. In other cases there were inequalities that could be fixed by raising upward. And there has been a development of cooperation and confidence as the result of that policy—or at least the beginning of that—where the management and the men, both through representatives, are cooperating to further the purposes of the T. V. A. in a way that when the management alone does it, without that cooperative help, it could not possibly accomplish it because there is always the balking of the employees.

Here you have got the will to work and the will to cooperate of the employees harnessed to the same will of the management, and they start right in at the beginning in their agreement, in that policy. An obligation rests on the employees as well as on the management to further the purposes of the T. V. A., and both are held responsible through their respective organizations and representatives.

CHAIRMAN MADDEN: Thank you.

THE WITNESS: Now, as a concluding statement, I would like to call your attention to the fact that underlying this whole question of labor relationship is the inequality of bargaining power between an employee and an employer.

And employee is a human being; an employer is rarely a human being nowadays. He is an artificial, government-created entity that we call a corporation.

Now, in the old days it used to be said—and I don't know whether it was a good law or not—when you have the two conflicting rights conflicting with each other, the government could not do anything about it. You had the right of the employer to hire or fire, and the right of the employees to work or not to work; and those were two equal rights and the government could not anything about it.

But when you have corporation—and let me give you an example—I know a corporation that has 37,000 stockholders, and around 14,000 employees. Now, in one sense you might say you have more employers than employees there, but of course that is not the fact. The corporation acts as one through its management. Now, will you say that the individual employee who comes to make the bargain with the employer is equal to the manager who is trying to hire him?

From an economic point of view the economists have analyzed it this way:

If the individual does not get a job from this employer, he is ont of business entirely—especially at a

time like this. Or if he has a disagreement with this employer, and the employer fires him, the employer loses 1/1400ths. That is how much damage the breaking off of contractual relations might do the employer.

But the breaking off of contractual relations to the employee means it is 100 per cent off to him. That is his whole business, the selling of his labor.

That is why no economist of any reputation holds that there is equality of bargaining power between individual employee and a modern employer such as a corporation.

Even though economists that hold that wages are determined by the value of the product that the margin of the last hired laborers—or the last to be hired—or the least necessary labor is contributed—even they will say—and you will find this in the "Essentials of Economic Theory", by John Bates Clark, who is the leading economist of the orthodox school. He said that his theory can not work out unless there is collective bargaining; that while the employer might be able to pay them the amount that they contribute to production in that way, he would not do it if he dealt with him individually. Bu they acted cooperatively through a labor organization, through collective bargaining, then they could get what they produce.

In effect that means that when employees bargain individually—that is, most employees, although I should not say employees who have a special kind of professional skill and who are in great demand—but labor, manual and clerical workers, when those people bargain individually, they tend invariably to get less than they produce. And only when they bargain collectively can they get what they produce under any scheme that the most conservative economists consider what they produce.

Now, that same fact is recognized generally by the public and it has been recognized by the courts; and I want to leave that with you.

For instance, in a case in which the state legislature of Utah—I think it was—tried to pass an eight-hour law with respect to mines and smelters, because the people were not able to get it by collective bargaining, the court in upholding the law, the United States Supreme Court, said this:

"The legislature has also recognized the fact"—and I would underline that word "fact"; it is not underlined in this—"which experience of legislatures in many states has corroborated, that the proprietors of these establishments"—and that is the employers—"and their operatives do not stand upon an equality, and that their interests are to be a certain extent conflicting. The former"—that is the employers—"naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by fear of discharge."

The Court itself knows that the fear of discharge is an important element in this situation. To continue—

"To conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health and strength. In other words, the proprietors lay down the rules, and the laborers are practically constrained to obey them. In such instances, self-interest is often an unsafe guard, and the legislature may properly interpose its authority."

Here you have a statement of the fact that economists have recognized and the public has generally recognized it and the courts and legislatures have general recognized that it is true, that the employers, if they are dealing with individuals, lay down the rules and the individuals have to accept them.

Whereas, if they could exercise fair judgment, they would not accept them. How can they exercise fair judgment? By collective bargaining.

An employer makes a proposition to an individual employee. The employee says, "Wait and I will have to take that up with my experts, the officials of my organization, who know a great deal more about this than I

do whether it is a thing I ought to accept or ought not accept,"—just the same as when an employee asks for something. When an employee asks for something, the foreman does not ordinarily decide it. He says, "I will have to take it up with the personnel manager."

If you have individual bargaining, the employer can not exercise his judgment. If he has collective bargaining, the employees can get an expert and get advice and counsel and they get it that way.

MR. CARMODY: Is it not frequently true, Doctor, that the employers, sometimes a small employer and sometimes a large employer, actually tells these employees or their representatives that he will have to see his attorney before he will make a decision?

THE WITNESS: Yes, very often. And for the employee to enjoy the same right, obviously an employee who gets twenty-five or thirty dollars a week can not hire an attorney. You attorneys charge too much. But if he can chip in a little money through an organization, he can get a good lawyer.

In conclusion it is interesting to note that the courts recognize something that we on these Boards always find.

CHAIRMAN MADDEN: You were quoting from Holden versus Hardy?

THE WITNESS: Yes, Holden versus Hardy, 169 United States 366.

When in these Boards we have disputes as to whom the employees want as their representative, the employer comes in and says, "These representatives are better for you," and the employer says, if one of these national unions would be elected, it would interfere with the rights of these other people who want something else."

It is rather interesting that rarely do the employees put up these arguments for the company union. Occasionally they do, of course, but the employer usually does it. And the same thing happened in this litigation and the court said:

"It may not be improper to suggest in this connection that although the prosecution in this case was against the employer of labor, who apparently under the statute is the only one liable, his defense is not so much that his right to contract had been infringed upon, but that the Act works a peculiar hardship against his employees, whose right to labor as long as they please is alleged to be thereby violated."

And the court says:

"The argument would certainly come with better grace and greater cogency from the latter class."

Now, it is very interesting that Chief Justice Hughes had to make the same kind of remark in the Texas and New Orleans case where he had to say that the company, which was furthering the company union in that case, complained because their motives in sponsoring the company union were questioned.

Chief Justice Hughes had to say that they can not complain—I am not quoting the exact language, but you will find it—that they can not complain, when their motives are questioned, when they are promoting an organization—althought they say it is for the benefit of their employees—when they are promoting it in opposition to the employees' own efforts to select their own organization and their own representatives.

Again and again the issue comes up in that way, that the employer says, "I know what is better for the employees and I am trying to protect their rights."

The employee, if he is to be an American citizen, must be presumed to know what is best for himself, and when he wants to associate and run his own organization and choose his own representatives, he is entitled to it.

CHAIRMAN MADDEN: Thank you very much, Dr. Leiserson.

(Witness excused.)

Whereupon

ABRAHAM BERGLUND

was produced as a witness for and on behalf of the National Labor Relations Board and, having been first duly sworn by the Chairman, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EMERSON:

Q Professor Berglund, will you give your name for the reporter?

A Abraham Berglund.

Q Where do you reside?

A In Charlottesville, Virginia.

Q You are connected with the University of Virginia?

A With the University of Virginia, yes.

Q What is your position?

A Professor of Business Economics. The position of full professor I have held since 1926.

Q While at the University have you had occasion to study the economics of the iron and steel industry?

A Yes, I have. I had a year's leave of absence and worked at the Brookings Institution in the academic year 1926 to 1927, and my particular work was the tariff on iron and steel.

Then I have written articles on the price policy of the Steel Corporation and the policy with reference to industrial stabilization. These articles have been published in the Quarterly Journal of Economics. That is a Harvard publication.

Q What degrees do you hold from the University?

A I hold a Bachelor of Arts from the University of Chicago and a Doctor of Philosophy from Columbia.

Q What is the nature of your thesis at Columbia in obtaining the Ph. D.?

A It was on the United States Steel Corporation.

Q Have you been associated with the United States Tariff Commission?

A Yes, I have.

Q When was that?

A From 1918 to 1922.

Q And what was the nature of the work there?

A The work there was the tariff on iron and steel products.

Q Now, Professor Berglund, I should like to develop first certain facts showing the comparative size and significance of the iron and steel industry. Would you state, first, the number of employees engaged in the industry?

A You have that varying somewhat from year to year. But, taking the number of wage earners in blast furnaces—and, of course, that is simply one step in the process of steel manufacture—you have the number for the year 1933, which of course is a rather bad year, you have only 12,098, and that represents 72 establishments.

Now, in connection with steelworks and rolling mills, where you have 394 establishments, the number of wage earners was 276,847.

Q What does that make the total?

A Well, that would make it roughly 288,000 and some odd. Of course, that was a much lower figure than when the business was more prosperous. In 1929 there were 105 establishments in operation in blast furnaces, and the number of employees almost double the number for 1933; that is, 24,960.

In the case of steelworks and rolling mills for the same year, you have 486 establishments, reporting employment of 394,574.

Q From what source are you quoting these figures?

A They are taken partly from the census and partly from the Annual Report of the American Iron and Steel Institute.

Q Would you state briefly what the American Iron and Steel Institute is?

A It is the Institute made up of men who are engaged in the manufacture of iron and steel, particularly steel. That is, they are products that would sell mainly as tonnage steel.

Q Is it a recognized association in the industry?

A Yes; it is.

Q How does the iron and steel industry rank with other industries, as far as employees are concerned?

A On the basis of number of workers, limiting yourself to manufacturing industries, it would rank about second among the manufacturing industries of the country.

Q Now would you state very briefly the value of the product of the iron and steel industry?

MR. SMITH: May I interrupt there? What would be the first of the manufacturing industries?

THE WITNESS: I am not sure, but my impression is that the textile industry is; yes, cotton goods. They have there (looking at papers) 1,379,445, and that ranks first. Then steelworks and rolling mills are second.

MR. CARMODY: Is that the value of product?

THE WITNESS: No; that is in number of workers. If you take it on the basis of value of production, steel works and rolling mills would rank third.

That is for the year 1933, but of course you have got to remember this in connection with the steel industry. As Mr. Carnegie said, steel is either a prince or a pauper. In periods of prosperity the output is very large, and very often there is an advance in the prices so that the value of the product will be very large. But this was for the year 1933 and, of course, that was a year of depression and the steel industry felt the depression very keenly.

I have here some figures with reference to the value of the product, although I don't know whether I have them rated for these years. But if you will take such a year as 1919, you have the value of the production given as $2,828,902,376.

In 1929, the value was $3,365,788,805.

You see there was quite a falling off between 1929 and 1933. In other words, the 1933 figure was just about one-third the figure for 1929.

BY MR. EMERSON

Q Have you given the 1933 figure on volume of product?

A The 1933 figure on volume of product as given here in this tabulation is $1,123,889,000—and I should judge it is given in general figures; that is, they don't carry out the units. That is, it may be just a tentative figure.

Q I show you two tablets, one entitled "Rank of Iron and Steel Industry—1933" and the other entitled "Plants and employment in the Iron and Steel Industry, 1899—1933," and ask you if they are correct summaries of the matters indicated thereon?

A Yes, I would say that they are.

MR. EMERSON: I will offer these in evidence.

CHAIRMAN MADDEN: They may be admitted.

(The papers so offered were received in evidence and marked as Board's Exhibit No. 29—Wheeling Steel Corporation, Board's Exhibit No. 72—Jones & Laughlin Steel Corporation, and Board's Exhibit No. 17—Crucible Steel Company of America; and Board's Exhibit No. 30—Wheeling Steel Corporation, Board's Exhibit No. 73—Jones & Laughlin Steel Corporation, and Board's Exhibit No. 18—Crucible Steel Company of America, respectively.)

BY MR. EMERSON:

Now would you state briefly, Professor Berglund the position of the iron and steel industry in the economic life of the United States?

A The Iron and steel industry is a very important

industry, very significant. If you take steel, you will find it entering into quite a number of products, and it has been partly for that reason that it has been said that the steel industry is the barometer of trade.

If you take the great bulk of the steel production today, you will have it in the form of rails, various plates used for the making of steel cars and used in building structures.

According to Lloyd's register, about 97 or 98 per cent of the world's merchant marine is constructed of steel. Of course, that is the commercial tonnage, representing the vessels of 100 gross tons or over. So you will see that steel is very significant and very important in the general industrial development of the country.

We build our great bridges, our skyscrapers, very largely of steel—that is, in a large measure.

Q Now Professor Berglund, I want to develop some facts with respect to the nature of the raw materials used in the industry, where they are obtained, the operations performed upon them, the disposition of the products of the industry—to show in a general way these facts as to the entire steel industry.

A Might I just say a word here? I have a sort of outline here with reference to the general character of the steel industry, and it won't take me long to run over this, and then you can supplement it with such questions as you may want to ask. This is a general treatment of the subject of steel and the steel industry. Would that be all right?

Q I would prefer to ask the question this way, and then if there is anything we have left out, you can supplement it.

A I thought of this that it is well to have a sort of general idea as to what we mean by the steel industry, in the first place, and that it is a good thing to know the significance of steel with reference to iron products in general.

Q All right; suppose you proceed.

A I have here a section with reference to steel, its nature and kinds. Now of course, I am speaking here of the technical aspects of steel, and there is a great deal to be said with reference to that, but I am making only a certain broad statement.

This won't take very long, and it is only a short treatment. I want to put this before you because when we come to define steel, you are up against a problem. The engineers themselves may differ as to whether a certain iron product should be classified as steel, or something else, and then you have differences in the steel industry, and I think that is very important in connection with the subject which you are investigating. I will bring that out, however.

(Testifying from paper.)

Steel is a form of iron, differing from other forms like ordinary cast iron and wrought iron, both physically and chemically. Ordinarily it is less brittle and tougher than cast iron, and has greater elasticity and hardness than wrought iron.

The carbon content ranges from about zero to as high as 2.2 per cent. Zero is where it has practically no carbon content.

With a small carbon content, roughly from 0.1 per cent to 0.3 per cent or 0.4 per cent, that constitutes so-called soft steel.

Much or most of the large tonnage of steel is what is called soft steel.

Much of this steel is manufactured into plates, sheets, wire products and the like.

High carbon or hard steel ranging from 0.7 per cent to 2.2 per cent carbon is largely used in the manufacture of high priced cutlery, watch springs and like articles. Such manufacture constitutes for the most part a different industry from the industry engaged in by, we will say, the United States Steel Corporation.

MR. CARMODY: Crucible steel, is it not?

THE WITNESS: It is often called crucible steel,

but today most crucible steel is not made in the crucible furnaces but in electric furnaces.

(Continuing with statement.)

In addition to variation in carbon content, steels ordinarily contain at least a small amount of alloy metal. If the per cent of alloy is large enough to give it certain characteristics suitable for special uses, as tungsten in the production of high speed steel, it is known as an alloy steel.

MR. CARMODY: When you say "high speed,' 'you mean steel used to make tools that are operated at high speed?

THE WITNESS: Yes. It is known as alloy steel.

Thus we have chromium steel, vanadium steel, manganese steel and the like.

The great bulk of the world's steel output consists of ordinary carbon steel with low or medium carbon content and limited amounts of other ingredients like manganese. Now, ordinary tonnage steel will contain roughly one half of one per cent of manganese. Manganese is important, but only a very small amount appears in ordinary steel. This is the steel which is the cheap or "tonnage" steel, with which we are all familiar in the form of rails, structural shapes, steel wire, ship and other structural plates, and the like. It is the steel produced by our great steel corporations and in Bessemer and open hearth furnaces. Some of these corporations do make a limited amount high grade carbon and various alloy steels, generally in electric and open hearth furnaces. The old crucible process is not employed to any considerable extent today. Most so-called crucible steel is made in electric furnaces or by a combination of the open hearth and electric furnace methods.

Now, I go on to say a few things about raw materials and steel production in general.

The principal raw material used in steel manu-

facture aside from fuel or electric power—that is, I consider electric power in a sense a raw material—consists of pig iron or a combination of pig iron and scrap.

With the increasing use of the open hearth process, scrap has become more and more important. This scrap, however, has at some time or other been pig iron. Pig iron is, of course, derived from iron ore, and is the output of the first step in the process of manufacturing steel and other products. This step is taken in blast furnaces.

The fuel used in the last furnace operations is coke, sometimes coal. Coke is generally high grade bituminous coal which has been subjected to a cerain refining process.

In fact, you might say that coke is in a sense a manufactured product.

With fuel, limestone is ordinarily used for fluxing purposes.

In the United States the leading ore producing areas are located in Minnesota and Michigan, several hundred miles away from the great iron and steel manufacturing centers of the nation.

Now, of course we do have in the Alabama area ore nearer the blast furnaces and the steel mills. But about 85 per cent of the ore used in the manufacture of pig iron in the United States comes from the Lake Superior region.

MR. CARMODY: Is the red ore in Alabama used without mixing or blending with other ores?

THE WITNESS: I understand there is some blending. I won't speak very definitely with reference to that, but I can say this, that in certain foreign countries where they have ore of a similar character to the Alabama ore, they have a peculiar form of Bessemer production where they do not resort to any mixing.

But, as I understand it, there is some mixing, but I don't know to what extent. I could not speak definitely on that.

MR: CARMODY: Is it not true that some of the large steel corporations in the country use both Cuban ore and Chilean ore?

THE WITNESS: Yes.

MR. CARMODY: Using them regularly?

THE WITNESS: Yes.

MR. CARMODY: Mining them regularly, transporting it regularly, and using it regularly?

THE WITNESS: Yes. You see, the Bethlehem Steel Corporation has ore properties way down in Chile, and while the distance is very great, water transportation is relatively cheap.

MR. CARMODY: And a large operation in Oriente?

THE WITNESS: Yes; and of course that is very much nearer.

Now, with reference to steel production, for several decades steel production has been both a furnace operation and a shaping performance. The product of the steel furnace—that is, Bessemer, open hearth, or electric—is really sold in the United States in the first form it assumes on coming out of the furnace, that is, in the form ingots.

If you look at price quotations, you will find rarely if ever any quotations for the steel ingots. It is either subjected to a rolling or forging process, or it is cast into some desired form. In other words, the steel company that makes the steel and that performs the furnace operation will carry on the process still further.

MR. CARMODY: Well of course, pig iron is sold.

THE WITNESS: Yes, pig iron is sold.

MR. CARMODY: There are many steel plants that do not have their own furnaces, are there not? Small plants?

THE WITNESS: Yes, sir; that is very true. But in the case of pig iron you have something that can be used for quite a number of different products. Even if you take pig iron, you will find that the bulk of it is not sold on the market.

MR. CARMODY: But there is some considerable market for billets, slabs, which come immediately after the ingots?

THE WITNESS: Yes, you have some shaping process in the making of billets and slabs, and so on. It is either subjected to a rolling or forging process or is cast into some desired form. This rolling or forging process, together with numerous supplementary operations, gives form to the various kinds of finished or semi-finished steel, such as rails, plates and sheets, structural shapes, bars, wire, skelp and pipe tubing tin plate and similar products.

Steel production for the most part, is an industry furnishing materials utilized by other producers. That is, rails are sold to railroads; structural shapes and plates are sold to builders and other construction workers; tin plate to canning companies and similar concerns.

The manufacture of tonnage steel is large-scale; that is, the producing process is most economical when performed by units whose individual output is large. For example, the most economical blast furnace is one whose output is about 1000 tons every 24 hours and requires an investment of some three or four million dollars.

In the report of the Industrial Commission of 1898-1902 it was estimated that it would require at least twenty to thirty million dollars to equip properly an up to date (at the time) steel plant. Today it would require in the field of tonnage steel an investment of at least three times those figures.

Integration of the successive stages in the production process is also a feature of the steel business. This integration is necessary to conserve the sources of raw materials to meet sudden and great demands for products as well as eliminate certain wastes due to independent operation in these stages.

With regard to the latter point, the placing of roll-

ing mills close to steel furnaces and steel furnaces to blast furnaces enables the producer to shift his molten pig iron from the blast furnace to the steel furnace, and the hot steel to the rolling mill without the necessity of a great amount of reheating, such as would be required if the pig iron were allowed to cool before being turned first to the Bessemer converter or open hearth furnace and the steel allowed to cool before the rolling process was put into operation.

It has been estimated that steel producers save from a dollar to two dollars per ton by the elimination of this waste. An organization like the Steel Corporation, with an average annual production of 20,000,000 tons, thus saves from twenty to forty million dollars a year by such integration alone. Similar savings are incurred by control of ore transportation on the Great Lakes in the use of highly specialized ore carriers and efficient loading and unloading in the various ports controlled by this great organization.

Now, steel manufacture is a succession of processes, but all under one great control. The successive stages representing these processes have become one vast unified system where each step is part of one great machine operation—that is, from the mining of the ore in Minnesota and Michigan to the rolling of hot steel into rails, billets, plates and sheets, and other finished steel products in the Pittsburg and the Chicago or Gary areas, of Pennsylvania, Illinois, and Indiana.

In other words, you have a process which is practically continuous from the mining of the ore to the sale of the finished product. It is really part of one vast operation.

Now, I thought I would put that before you so that you would get sort of a prospective of the steel industry.

BY MR. EMERSON:

Q I would like to go for a moment a little farther into the sources of the production of ore. Do you have the figures showing the production in the Lake Superior region of the United States?

A Yes; I have some figures here. These are given in percentages, but I will give you some figures here with reference to shipments. If you go back to 1850, about 55.5 per cent of the iron ore used in the United States came from the State of Pennsylvania.

Now, when you come down to 1890, when we have our first figures with reference to Lake Superior shipments, only about 10-7/8 per cent comes from Pennsylvania, and a very small percentage from Ohio. Ohio had been the second most important source of iron ore.

But in the case of the Great Lakes, you have in 1890 over half coming from that area, that is, the Lake Superior region. The figures here are 55.77.

Now, coming down to the year 1934, you have only 2.13 per cent of the ore coming from Pennsylvania, and practically nothing from Ohio, and 85.53 per cent from the Lake Superior region.

Q I will show you this map, entitled "Pig Iron—source of ore, furnace capacity, and regional production," and ask you if that accurately denotes the source of ore?

A Yes, that shows the source. Here you have the great bulk coming from the Upper Lake Region, and the great production is here in Minnesota, which furnishes considerably over half of the iron ore in the United States.

There you have a little from Wisconsin, and more from the Upper Peninsula of Lake Michigan.

Now, that ore goes by steamer from these Lake ports down to the lower Lake ports, some of it going down here to the Chicago region—that is, taking in Chicago and Gary, Indiana.

Much of it, however, goes right on to Lake Erie, and to various blast furnaces on the southern shore of Lake Erie.

Now, these dots here represent the blast furnaces which take the ore. You have some of them on the southern shore of Lake Michigan. These dots represent

a yearly capacity of 500,000 tons each. The other dots represent less than 500,000 tons a year.

But you will note that there is a great concentration in the Pittsburgh area, and then there is a concentration here.

Now, you have some scattering in this part of the country, and then you have some in the South. There is some concentration in the Alabama region. The Alabama mills are mills which use Alabama ore for the most part, but probably with some mixing.

MR. SMITH: The second concentration area to which you refer is around Chicago, and the scattering you refer to is in the East? Is that correct?

THE WITNESS: Yes, you have some in Chicago, and then some here.

MR. CARMODY: The scattering in the East is Sparrows Point, Maryland and the Harrisburg district in a small way?

THE WITNESS: Yes.

BY MR. EMERSON

Q Professor Berglund, are these tables scattered around the margin of this map accurate representation of the facts which they purport to show?

A Yes.

MR. EMERON: I will offer this in evidence.

CHAIRMAN MADDEN: It may be admitted.

(The map so referred to was received in evidence and marked as Board's Exhibit No. 31, Wheeling Steel Corporation; Board's Exhibit No. 74, Jones & Laughlin Steel Corporation; and Board's Exhibit No. 19, Crucible Steel Company of America.)

MR. SMITH: Did you ask, Mr. Emerson, what is the source of that table? Is that prepared by Professor Berglund?

THE WITNESS: No, that was prepared here in

the office, I think. I think the source of that, from reports of the American Iron and Steel Institute, is considered reliable and their reports are very often taken by the Census when it computes its figures with respect to steel production.

BY MR. EMERSON:

Q I show you three tables, the first entitled "Per cent of total United States iron ore produced in Ohio and Pennsylvania, compared to production in the Lake Superior district, 1850-1934." The second is entitled "Movement of iron ore from the Lake Superior Region, 1934;" and the third is "Relation of iron ore shipments to production and manufacture of pig iron and steel ingots, 1934"—and I ask you if those facts shown thereon are accurate?

Yes, they are accurate, in so far as I can see. Of course, I have to speak generally, but I know that is substantially correct.

Q And the sources from which those tables are computed are designated at the bottom of the tables?

A Yes, from the United States Department of the Interior, and the Minerals Hand Book. You have in the Department of the Interior published figures with respect to principal minerals, such as coal—well, I don't know but what the Bureau of Mines give those figures now; but formerly it was from the Department of Interior.

MR. CARMODY: I think the Bureau of Mines is back into the Department of Interior, after having been transferred from the Department of Commerce.

THE WITNESS: Yes, it is back in the Department of Interior.

MR. EMERSON: I offer these in evidence.

CHAIRMAN MADDEN: They will be admitted.

(The three papers referred to were received in evidence and marked as, first, Board's Exhibit No. 32—Wheeling Steel Corporation, Board's Exhibit No. 75—

Jones & Laughlin Steel Corporation, and Board's Exhibit No. 20—Crucible Steel Company of America; second, Board's Exhibit No. 33—Wheeling Steel Corporation, Board's Exhibit No. 76—Jones & Laughlin Steel Corporation, and Board's Exhibit No. 21—Crucible Steel Company of America; and, third, Board's Exhibit No. 34—Wheeling Steel Corporation, Board's Exhibit No. 77—Jones & Laughlin Steel Corporation, and Board's Exhibit No. 122—Crucible Stee Company of America, respectively.)

BY MR. EMERSON:

Q Now, Professor Berglund, I show you a table entitled "Interstate movement of coal used in by-product coke production."

I show you two tables, the first entitled "Interstate movement of coal used in by-product coke production, 1933." The second table is "By-product coke produced and sold or used by producer, by states, in 1934," and ask you if the figures states in those tables are accurate.

A Yes. The year, of course, is different. One is 1933 and the other is 1934.

MR. EMERSON: I offer these tables in evidence.

CHAIRMAN MADDEN: They will be admitted.

(The two papers referred to were received in evidence and marked as Board's Exhibit No. 35—Wheeling Steel Corporation, Board's Exhibit No. 78—Jones & Laughlin Steel Corporation, and Board's Exhibit No. 23—Crucible Steel Company of America; and, second, Board's Exhibit No. 36—Wheeling Steel Corporation, Board's Exhibit No. 79—Jones & Laughlin Steel Corporation, and Board's Exhibit No. 24—Crucible Steel Company of America, respectively,)

By MR. EMERSON:

Q Do the figures in the Exhibits just introduced show that certain steel producting states use coal or coke which comes from outside that state?

A Yes, the figures do. Now, here there are some figures for 1933.

Q You are referring to the table entitled "Interstate movement of coal used in by-product coke production?"

A Yes; is that what you want?

Q Yes.

A Now, you have in that the coal used, amounting, for all the states, to, in round numbers, 39,500,000 tons. Now, of that amount, 11,200,000 tons comes from coal within the state.

MR. CARMODY: From within the state where it is used?

THE WITNESS: Yes, within the state where it is used.

Now, you will have some important states producing practically none of the coal. For instance, in Ohio, there you have none of the coke produced within the state, but you will have 5,200,000 tons which are consumed in that state that come from outside the state.

MR. CARMODY: Is that figure accurate when you say that no Ohio coal is used in any of the steel plants in Ohio?

THE WITNESS: Well, I am taking it just for this year, and this particular figure from the Mineral Year Book for 1934, and from the United States Bureau of Mines, as the source.

You will remember that in the case of coke you have a product which is made from what you might call high grade bituminous coal. At the same time, not all bituminous coal is suitable for coke production: In fact it is a rather interesting thing to note the trade of such a country as Japan. If you consult the trade figures of Japan, you will find that Japan has a very heavy im-

port trade in coal and a very heavy export trade in coal. So the question would naturally be raised as to why Japan has the heavy trade figures in coal, both export and import. The reason is that she imports metallurgical coal, which is coal that would be used for various furnace operations; but she exports a low grade coal to China and various other places, whereas she gets from China high grade coal which can be used in blast furnaces.

BY MR. EMERSON:

Q Is by-product coke used for other purposes than steel production?

A Yes; there are certain other uses, I think.

Q To what extent is the total production of by-product coke used in steel production?

A Well, you will have it in connection with furnace operations, that is, blast furnace operations, considerably over half. That is, if you take a production of about 30,792,711 tons, which is the figure for 1934, you will have about 15,313,135. That is the figure representing use by the producer in blast furnaces.

In addition to that you will have some other coke which is used in various furnace operations which the producer himself did not produce or did not control.

Q Those figures you are referring to now are taken from this last table we have introduced, entitled "By-product coke produced and sold or used by producer, by states, in 1934?"

A Yes, this table for 1934, from the Mineral Year Book.

Q Yes. Now, you have testified that manganese is also used in the production of steel. Will you state the source of manganese?

A If you take the manganese used in ordinary steel manufacture, that is, in the manufacture of tonnage steel, it comes mainly from three great sources. You have a considerable amount imported from Brazil, not so much today as formerly. A somewhat higher

grade of manganese ore comes from India. And then a third very important source, both for producers of thorough manganese in England and producers in the United States, is Russia. Those three areas furnish the greater part of the manganese, used in the production of high grade thorough manganese such as is used in the manufacture of ordinary tonnage steel. Now, that, is important.

We do have some domestic ore used. Here are some figures for 1933.

Q Will you state the source of these figures?

A These are figures taken for the Statistical Abstract of the United States, 1934, pages 513 and 661.

Now, the manganese ore used, the import amounted to 95,074 long tons. The domestic ore used amounted to 18,558 tons. You see, there is a very much smaller proportion of the domestic ore.

There has been an effort on the part of certain manganese ore producers to have a sufficiently high protective tariff on ore, and they did secure it in the Acts of 1922 and in the Hawlay-Smoot Tariff of 1930. But, notwithstanding, that fact, we are forced to resort to foreign manganese ore.

MR. CARMODY: From what states principally does the domestic supply come?

THE WITNESS: Well, I do not have the figures here, but several years ago it came mainly from Montana. There was some in Virginia, and some in some of the Western states. I don't remember that very definitely. It was largely scattered, largely in the West. But Virginia was one state that did produce some very high grade manganese ore.

BY MR. EMERSON:

Q Does any substantial amount come from states in which steel plants are located?

A No.

Q What are the sources of scrap steel used in production?

A Well, a good deal of scrap is waste material of steel mills. That is, I refer to such parts of the steel as would be eliminated in the manufacturing process. Of course, a great deal is old steel, and it comes from various places—from ald steel rails, which will be used as scrap.

Q Does scrap steel come from any particular source?

A It is from all over. In some parts of the country, in the manufacture of steel, the great bulk of the steel is made of scrap. On the Pacific Coast I was told by a producer of steel there—I think the Pacific Steel Company—that something like 85 or 90 per cent of raw material used in the steel manufacture was scrap.

MR. CARMODY: Well, is not the steel scrap business itself a very considerable business, with its own trade association?

THE WITNESS: It is.

MR. CARMODY: With assembling yards in various centers throughout the United States.

THE WITNESS: Yes.

MR. CARMODY: And gathering agents and buying agents, as well as selling agents for the scrap?

THE WITNESS: Yes; usually in the open hearth process—which is the principal process now in use in steel manufacture—you will have as much as 50 or 60 per cent of the material consisting of scrap.

MR. CARMODY: That is, of the material that goes into the furnace?

THE WITNESS: Yes.

If you consult the figures with reference to steel output of the country, you will find that in recent years the production of steel in terms of ingots and castings considerably exceeds the pig iron production.

MR. CARMODY: Is it not true that you could not run the modern steel enterprises without the use of scrap?

THE WITNESS: Yes; that is practically the case, with the use of the open hearth furnaces.

MR. CARMODY: Is that not the most economic process today?

THE WITNESS: Yes, it is the most economic process.

MR. CARMODY: And is not this scrap actually gathered into yards by firms that do nothing else, in practically every state in the United States?

THE WITNESS: Yes: it is a big business.

MR. CARMODY: A very large business?

THE WITNESS: Yes.

MR. CARMODY: I wonder if anybody has developed the figures to show what a large business that is, and what its ramifications are, and how independently it is set up, with its own trade association?

THE WITNESS: I think the American Iron and Steel Institute has some figures along that line. At least they do give certain figures with reference to scrap output. How far they give it by allotting the amounts according to states, I can not say.

MR. CARMODY: And, as a matter of fact, the production of scrap and the sale of scrap enters into the economic price structure of fabricated steel, for instance, because a very considerable part of the tonnage comes out in punchings and also in shearings, which in turn is sold back to the steel mills?

THE WITNESS: Yes.

MR. CARMODY: And the fact that this is taken into account in setting the prices? Is that not true?

THE WITNESS: Yes.

MR. CARMODY: So that it is an important factor in our commerce in steel?

THE WITNESS: Yes; it is very important.

BY MR. EMERSON:

Q I believe you already testified, Professor Berglund, that this map which is already introduced in evidence shows accurately the location of the steel producing plants of the industry?

A Yes; it does that substantially.

Q Now, I show you this table entitled "Distribution of Steel to Consuming Groups, 1934" and ask you whether the figures states therein are accurate?

A Yes; those figures are correct.

I may say, with reference to the distribution of steel, that the automotive industry takes something like 20 per cent, or a little over. Now, the railroads and builders take about 25 per cent or perhaps a little more; that is, the two together. Then the manufacturers of containers take about 8 or 9 per cent.

About five and a fraction per cent of the steel is exported. Then you have smaller amounts going to oil, gas, and water concerns, and to our machinery and quite a number of other lines of consumption.

MR. EMERSON: I offer this table in evidence.

CHAIRMAN MADDEN: It may be admitted.

(The paper referred to was received in evidence and marked as Board's Exhibit No. 37, Wheeling Steel Corporation; Board's Exhibit No. 80, Jones & Laughlin Steel Corporations; and Board's Exhibit No. 25, Crucible Steel Company of America.)

BY MR. EMERSON:

Q With reference to the use of steel by the automotive industry, that steel, I take it, is transported to the plants which manufacture automobiles?

A Yes.

Q I show you this table, entitled "Production and Distribution of motor vehicles in the United States, by states, in 1933," and ask you whether the figures therein stated are accurate?

A Yes.

MR. EMERSON: I offer this in evidence.

CHAIRMAN MADDEN: It will be admitted.

(The paper referred to was received in evidence and marked as Board's Exhibit

No. 38, Wheeling Steel Corporation; Board's Exhibit No. 81, Jones & Laughlin Steel Corporation; and Board's Exhibit No. 26, Crucible Steel Company of America.)

THE WITNESS: I think I have a statement here that may be of interest in this connection. This is taken from "Twenty-two leaders of American Business discuss the automobile industry"—from the Automobile Manufacturers Association.

Now, here is a statement which is made by W. A. Irwin, President of the United States Steel Corporation.

BY MR. EMERSON:

Q This is published by the Automobile Manufacturers Association?

A Yes: He says:

"The production line of the automobile industry now begins back in the steel mills, and we are in accord with any effort to keep it running more steadily through the years."

That is a statement made by the president of a steel corporation.

And then here is another statement by the President of the Youngstown Sheet and Tube Company.

"The automobile industry, for years a principal customer for steel, has been an indirect but important factor during the depression years in employment required in the production of raw material and supplies entering into steel, such as operation of ore and coal mines with their large tonnages going to transportation systems. Five tons of raw material are required for every tons of outbound finished steel product and the automobile producers, by keeping car prices within reach of the general public resulting in a substantial consumption of steel, have been the most important factor in providing em-

ployment to those directly and indirectly connected with the steel industry."

BY MR. EMERSON:

Q What is the source of the paper to which you are about to refer?

A This is taken from Steel Facts, April, 1936, published by the American Iron and Steel Institute.

It says:

"The sheets used in the manufacture of automobile bodies are made from a 'mild' or low-carbon grade of open hearth steel. This steel is made with all the skill and care that are at the command of netallurgical science. Special treatment is given the molten metal to insure soundness and freedom from abnormal amounts of gases and non-metallic particles which would injure its surface or detract from its drawing quality. From the time that the steel is made in the open hearth furnace to the time when the finished sheets are ready for shipment, the steel is under constant control for temperature, rolling speed, accuracy of gage, and surface conditions.

"The cold rolling process, in which sheets are passed between the rolls of a rolling mill after having cooled down from the red heat at which they had previously been rolled flat, controls certain of the qualities essential in sheet steel used for automobile bodies."

And then they go on to speak about certain difficulties with the steel—although that has a regular technical significance.

Q Did you state, Professor Berglund, the source of that quotation you have just read?

A Yes, it is from "Steel Facts," published by the American Iron and Steel Institute.

Q Steel which is consumed by the railroad industry is likely to be used in any port of the country, is that correct?

A Yes, that is correct.

Q Would the same apply to steel used by the building industry?

A Yes.

Q I show you this chart, entitled "Major Iron and Steel operations—1929," and ask you whether that is an accurate representation of the facts which it purports to show?

A Yes; that is substantially correct.

MR. EMERSON: I offer this in evidence.

CHAIRMAN MADDEN: It may be admitted.

(The chart referred to was received in evidence and marked as Board's Exhibit No. 39, Wheeling Steel Corporation; Board's Exhibit No. 82, Jones & Laughlin Steel Corporation; and Board's Exhibit No. 27, Crucible Steel Company of America.)

CHAIRMAN MADDEN: We will recess until 2:00 o'clock.

(Whereupon, at 1:00 o'clock p. m., the hearing was recessed until 2:00 o'clock p. m., same day.)

AFTERNOON SESSION

(The hearing was reconvened at 2:00 o'clock p. m., pursuant to noon adjournment.)

Whereupon

ABRAHAM BERGLUND

the witness on the stand at the hour of adjournment, resumed the stand, and having been previously duly sworn, was examined and testified as follows:

BY MR. EMERSON:

Q I show you this table entitled "Interstate Distribution of Iron and Steel Products for All Mills within a 50-Mile Radius of Pittsburgh, Pennsylvania," and I ask you whether to the best of your knowledge these figures are correct?

A Yes, I would say that they are substantially correct.

MR. EMERSON: I will offer this table in evidence.

CHAIRMAN MADDEN: It is admitted.

(The paper so referred to was received in evidence and marked as Board Exhibit No. 40, Wheeling Steel Corporation; Board Exhibit No. 83, Jones & Laughlin Steel Corporation; and Board Exhibit No. 28, Crucible Steel Company of America.)

BY MR. EMERSON:

Q What does this table show with respect to the interstate distribution of iron and steel products for mills in the area of Pittsburgh?

A It shows that the greater part goes out of that area; in other words, it is a part of commerce.

Now, we have here the total distribution, 1,531,000 net tons of products, which are subject to code regulations and that represents about 20 per cent of the national total.

Now that was for a period of three months, ending June 30, 1934. Now, of that amount, 517,000 tons, net tons, were distributed to various points within Pennsylvania, but you have over against that some one million—something over one million tons which goes out of Pennsylvania. In fact, only about a third of that remains in the State of Pennsylvania, and of course Pennsylvania being a State where many of the industries dependent upon steel are located, there naturally would be a very considerable consumption of steel products within Pennsylvania, but even making allowance for that, you will find that about two-thirds of the total output goes outside of the State of Pennsylvania.

CHAIRMAN MADDEN: That indicates, Mr. Emerson, the total output of what?

THE WITNESS: Those steel products subject to the provisions of the Steel Code, under the N. R. A.

CHAIRMAN MADDEN: Is that more particularly described somewhere? That is, does that include something else?

THE WITNESS: As I understand it, the Supplement No. 1, N. R. A. report, Operation of the Pittsburgh Basing Point System—

CHAIRMAN MADDEN: And that would include half-finished things as well?

THE WITNESS: In fact, you might say products for which you have prices quoted, and that would take in the bulk of the steel output.

CHAIRMAN MADDEN: Very well.

BY MR. EMERSON:

Q Is it a fair statement to say that products of the iron and steel industry constitute a continuous flow of the products from the mining areas to the steel mills and from there throughout the country?

A Yes, sir.

Q Now, you spoke this morning with reference to the integration of leading steel companies. Would you describe more specifically what that integration consists of?

A If you take certain figures with reference to output, with reference to capacity, with reference to capitalization, you will find that under a very limited number of concerns you have the greater part of the industry controlled.

Now, here are some—well, I had better begin first with the tendency toward large-scale production.

Now, if you take blast furnaces, you will find that in 1899, the number of establishments was something like 226; by 1933, they had declined to 72. Now that, of course, was partly caused by the depression, but even if you take 1929, which was the banner of steel production in the United States, the number has been cut down to 105, and that means that each establish-

ment is producing a great deal more than had been the case in 1899.

In other words, production is being more and more centered in certain large establishments. That is, you are having much bigger blast furnaces.

Q Would you state the source of those figures, Professor?

A Those are the United States bi-annual census of manufacturers, 1921, and the census of manufacturers, 1933, summary.

Now, if you take steel works, you don't have such a marked decline in the number of establishments, but you do have a rather small number as compared with the enormous increase of steel output.

Now, if you take 1899, you have reported 445 steel works and rolling mills. In 1929, you have 486, although production in that period tripled or quadrupled, but just a slight increase in the number of establishments. You have some decline in the years from 1929 to 1933, and the number given here is 394.

Now, with reference to the number of wage-earners, in the case of blast furnaces, in 1899, you have the total number given as 39,241, and in 1929, the number had declined to 24,960, although the output had been enormously increased.

Of course, that was due to various labor economies effected in blast furnace operations.

The number of 1933 is only 12,098, but of course part of that decline is due to the business depression.

Now, if you take wage earners in steel mills, you have some increase. Now, in 1899, you have 183,249 of the wage earners, and in 1929, the number was 394,574. Thas is more than double the figure for 1899. Now, there is some decline in the years following 1929. The figure here is 276,847.

You have here, in spite of the very great increase in the output of steel, no corresponding increase in the number of establishments, so you have the same tendency toward large-scale production.

Q Are those figures from the same sources mentioned before?

A Yes, they are the same sources.

Q What was your definition of "establishment"? Is that a plant or a company?

A They tried to give a definition in the census for establishments." It doesn't mean just a single furnace, necessarily, or a single building. You may have a number of buildings, if they are subsidiary to one another, and you have the same bookkeeping accounts, and then you have what is called a single establishment.

There is some question in some instances whether or not you can say they are one or more establishments.

Q Now, is a large share of the output of the steel industry controlled by a few companies?

A You mean in the steel business?

Yes, you do have a very decided control. Now, I have here some figures with reference to the steel capacity, and with reference to capitalization.

Q I show you that table entitled "Ingot capacities and capitalizations of leading steel corporations, 1924" and ask you if to the best of your knowledge those figures are accurate?

A Yes, they will be substantially correct.

MR. EMERSON: I offer this statement in evidence.

CHAIRMAN MADDEN: Received and marked "24."

(The paper so referred to was received in evidence and marked as Board Exhibit No. 41, Wheeling Steel Corporation; Board Exhibit No. 84, Jones & Laughlin Steel Corporation; and Board Exhibit No. 29, Crucible Steel Company of America.)

THE WITNESS: I may say with reference to that, that of the total for the United States, and the total here, and the concerns which have reported, and you would have probably about 97 per cent of the country's total, at any rate, the American Iron and Steel Institute estimates that as the probable amount.

You have the capacity of 71,431,089 gross tons, capacity for steel products for the country as a whole.

Now, of that amount, the United States Steel Corporation has 27,349,900, and the Bethlehem Steel Corporation 9,360,000, making a total for those two companies of 36,701,700, or a little over 50 per cent of the total.

Now, if you take the capitalization—

CHAIRMAN MADDEN: Is that annual output?

THE WITNESS: That is what is called "capacity." The annual output is less than that.

CHAIRMAN MADDEN: Do they have annual capacity?

THE WITNESS: Well, you take it on the basis of annual capacity.

CHAIRMAN MADDEN: I see.

THE WITNESS: That would be annual capacity. In fact they measure the capacity on the basis of annual output. If they are working at 100 per cent capacity, these steel concerns that are given here would produce seven million and some odd gross tons of steel. Of course, we have never reached such a large production.

Now, taking capitalization, you have the total of $4,738,496,000 and of course capitalization doesn't always mean the real investment in the business, but at any rate, that is the capitalization given for the different steel concerns, and that is represented in the report of the American Iron and Steel Institute for 1934.

Now, that amount—of that amount the capitalization of the United States Steel Corporation is $1,962,-366,650. Now, if you take the Bethlehem Steel Cor-

poration, you have a capitalization of $621,960,789. Now, these two make a total of $2,584,327,437, which is a little over half of the total for the country, so those two concerns have half of the capacity, or half of the capitalization, or a little more than half, and then you have another important company, the Republic Steel Corporation, with somewhat less than the Bethlehem Steel Corporation, so you see you have under control of a limited number of concerns the greater part of the steel output of the country.

BY MR. EMERSON:

Q Now, these large concerns also control the sources of their raw materials, and methods of transportation, and in other words, do they have a vertical control?

A They have a vertical combination.

Q Would you develop that to some extent?

A Well, now, if you take the Steel Corporation, you have a very large part of the ore properties of Minnesota and Michigan under the control of the Steel Corporation. That is, some of the subsidaries of the Steel Corporation.

Now, the Steel Corporation carries the ore from the upper lake ports to the lower lake ports by the Pittsburgh Steamship Company, which is controlled by the United States Steel Corporation. Now, the railroads operating from the mines to the upper lake ports are in general industrial railroads, although it is true that they do carry for others, but their main traffic is traffic in iron or with some coal and such materials as will be necessary for use in mining operations and for the subsistence of workers, and so on. That is, the traffic is made up of such materials.

Of course, there are some freight shipments on those roads, which represent the freight of other concerns, but the amount is very insignificant.

Now, in the lower lake ports you have quite a considerable movement from the lower lake ports to the

various blast furnaces and so forth, in the Pittsburgh region, and many blast furnaces in the southern end of Lake Michigan are pretty near the shore line.

Q Is this vertical combination, as you described, of the United States Steel Corporation,—is it similarly true that other of the large companies have similar combinations?

A They have to a considerable extent. In the case of some organizations where you depend upon other places, now, for instance, the Bethlehem Steel Corporation secures a considerable amount of its ore from Cuba, and particularly from Chile, and there you have the vessels operating from South America, or from the West Indies, to the United States. That is simply carrying ore from those regions.

Q I show you these tables entitled "Bethlehem Steel Corporation Properties and Capacities" and a chart indicating the combination of companies which have been merged with the Bethlehem Steel Corporation, with a similar chart, and similar material with respect to the Crucible Steel Company and the Wheeling Steel Corporation, and Jones and Laughlin Steel Corporation, and Youngstown Sheet and Tube Company, and ask you whether the facts stated in these tables are substantially correct?

A Yes.

MR. EMERSON: I offer those in evidence.

CHAIRMAN MADDEN: Admitted as "25."

(The papers so referred to were received in evidence and marked as Board Exhibit No. 42, Wheeling Steel Corporation; Board Exhibit No. 85, Jones & Laughlin Steel Corporation; and Board Exhibit No. 30, Crucible Steel Company of America.)

BY MR. EMERSON:

Q With respect to the products of the iron and steel industry, would you say that the market was a national market or that it was local in nature?

A It certainly isn't local. It is decidedly national, and when things are pretty prosperous, it tends to be international.

Q Would you describe very briefly the basis point system in this connection?

A Roughly speaking, when speaking about the basing point system, you have a price policy where you have certain centers of production, being the region from which you name your prices. That is, now, Pittsburgh has been a sort of a base for many steel products.

Theoretically, the price of other regions will be the Pittsburgh price plus the cost of transporting the steel to other regious. Now, of course, that leads to, if you take such a corporation as a steel corporation, that means if it should sell some material to some consumer in Iowa, or Nebraska, instead of having the product manufactured in Pittsburgh, they would have it perhaps at Chicago, or Gary, or some other western mill, but instead of fixing the price there at that particular mill, and then simply charging the cost for transportation the product to its ultimate destination, they make a charge from Pittsburgh to the consumption point. But that has been due to the fact that in the development of the steel industry, Pittsburgh was really a base for steel production, and in other regions the cost of production would be materially higher. Today that is not the same, and that is not so true.

Q Does the basing-point system prevail in the industry at the present time?

A I believe the Federal Trade Commission has issued orders against it, or at least they have ordered a modification of it, so I don't think that it prevails to the same extent, although you will have prices

quoted from certain points, at so much at Pittsburgh, and so much at Gary, or Chicago, or so much at the far-west.

Q That is, there would be a number of basing points?

A Instead of at Pittsburgh.

Q What would be the effect of a cessation of operations in the steel industry upon the flow of raw materials?

A There would be a very serious interruption. The plants are dependent upon that.

Q What would be the effect upon the other industries, dependent upon their product?

A It would affect them, and they wouldn't be able to get their necessary material.

Q That would apply to all of the consuming industries?

A And the industries which consume the products of the steel industry.

MR. EMERSON: That is all the questions I have of this witness.

CHAIRMAN MADDEN: Thank you very much, Professor Berglund.

THE WITNESS: You are welcome.

(WITNESS EXCUSED)

Whereupon

MISS CHARLOTTE CARR

was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

MR. EMERSON: I want to state for the record that this evidence which Miss Carr will give is only for the Jones & Laughlin case, and does not apply to the other two cases.

BY MR. EMERSON:

Q Miss Carr, will you give your name to the reporter?

A Charlotte Carr.

Q Miss Carr, you testified here in response to a subpoena issued by the Board?

A Yes.

Q What is your residence at the present time?

A 45 Park Avenue, New York City.

Q You were at one time connected with the Pennsylvania State Department of Labor?

A Yes, for four years, between 1925 and 1929, I was the Director of the Bureau of Women and Children in the Labor Department, and I was Deputy Secretary of Labor from that point until January of 1935.

Q Did your duties in that Department bring you in contact with labor and industrial conditions in the State of Pennsylvania?

A It did.

Q And you are familiar with conditions in the iron and steel industry in the State of Pennsylvania.

A Yes.

Q Has it been the practice in the State of Pennsylvania for certain employers to employ special police, commissioned by the State, known as coal and iron police?

A Yes, that has been a practice for many years, in Pennsylvania.

In 1931, Governor Pinchot refused to give commissions to the coal and iron police, although the law permitting such commissions was still on the statute books.

Q Who paid these coal and iron police?

A The coal and iron police were paid by the steel and coal owners.

Q But they were commissioned by the State Government?

A They were commissioned by the State Government.

Q And these commissions, you say, were revoked in 1931?

A Yes.

Q Now, did the employers still obtain men for that purpose, despite the revocation of the commissions?

A With the revocation of these commissions it was found that the sheriffs of the various counties, particularly in the western part of the State, in the coal and steel areas, would deputize deputy sheriffs, who in personnel as well as in responsibilities, were identical with the people who had been previously coal and iron police.

As previously, they were paid for by the owners of the mines or the mills, and were under the direction of the owners of the mines and mills.

Q Would you state what these coal and iron police were used for by the companies of Pennsylvania.

A The coal and iron police were definitely appointed for the prevention of the organization of workers in the mines and mills, and for the protection of property, and the prevention of picketing in times of strike.

Q What methods did they employ to prevent the organization of workers?

A Well, that is an age-old story, in the history of the struggle for organization of labor in the steel and soft-coal areas. They were, to all intents and purposes, officers of the law in uniform, with arms, and they used physical force to see that gatherings of individuals were dispersed and that parades were interrupted, and that actual picket lines were broken up.

Q Was the commission appointed by the Governor of Pennsylvania to investigate the special policing in the industry of Pennsylvania?

A Yes, in February, of 1934, Governor Pinchot appointed a commission to study this question.

Q Did the Department of Labor cooperate in the work of that commission?

A The commission had no funds, and it was appointed without salary, or without appropriation, and the Department of Labor and Industry served in a secretarial capacity, and its mediator and its Bureau of Mediation assisted the commission in its investigations.

Q Would you state briefly the manner in which the commission made the investigation?

A The commission concentrated its investigation on two localities, Fayette County and Beaver County. The reasons for the concentration of its investigation in these two points were that—if I refresh my mind as to the date—in July of 1933, there was a coal strike in the western part of the State, and in Fayette County the activities of the deputy sheriffs to all intents and purposes, the old coal and iron police, were so definitely against the civil rights of the people, including their rights to organize, that Governor Pinchot was obliged to order the National Guard into the county to preserve order.

The reason that Beaver County was selected for special investigation by the commission was that in October, in 1933, at the time of the steel strike, in Ambridge, Beaver County, the sheriff of Beaver County had recruited about 150, in addition to the regular one hundred deputy sheriffs in the county, for the purpose of stopping picketing. A riot followed the activities of these deputy sheriffs, resulting in the loss of one life, and I believe a number of injuries, and the commission reported very fully upon all of the circumstances of that trouble.

Q The commission made a report to the Governor?

A Yes.

Q Was that report published by the Department of Labor?

A The report of the commission is a special bulletin No. 38 of the publications of the Department of Labor and Industry. This is a copy of that.

Q You are referring to the document now handed me?

A Yes.

MR. EMERSON: I wish to offer in evidence this report of the commission on special policing in industry, published by the Pennsylvania Department of Labor aand Industry.

CHAIRMAN MADDEN: It is received as Commission's Exhibit 26.

(The paper so referred to was received in evidence and marked as Board Exhibit No. 43, Wheeling Steel Corporation; Board Exhibit No. 86, Jones & Laughlin Steel Corporation; and Board Exhibit No. 31, Crucible Steel Company of America.)

BY MR. EMERSON:

Q While you were serving as Secretary of the Pennsylvania State Department of Labor and Industry, did complaints come to the Department from employees of Jones & Laughlin Company at Aliquippa?

A Yes, a particularly large number of complaints came in the summer, and early fall of 1934.

Q What was the nature of those complaints?

A The complaints which were sent to the Governor and sent to me as Secretaary of Labor and Industry, were to the effect that the workers were not being permitted to organize in accordance with Section 7A of the N. R. A., and asking assistance from the State Police to protect their civil liberties.

Q What action did the State Department of Labor take?

A The State Department of Labor sent its mediators to investigate the situation, and at the same time

the Federal Labor Department sent a mediator to investigate, and the National Steel Board had asked for a report from the Department of Labor and Industry, regarding the whole situation.

Q Did the Department of Labor and Industry conduct an investigation and make a report to the National Steel Labor Relations Board?

A Yes, sir.

Q Would you state, first, the nature of the investigation that was made at that time?

A The investigation was made intensively, following a hearing before the Steel Labor Board in October of 1934, at which time on a petition from the lawyers of Jones & Laughlin Company, the hearing was postponed, and the workers who had come to testify at the hearing expressed themselves as being afraid to go home, because of the physical danger that they felt that they would be in, because of their daring to testify.

Following that, following that information, and with verification of the possibility of that danger which was evident to the mediators of the Labor Department, the Governor of Pennsylvania sent the State Police into the town of Aliquippa for the protection of the civil liberties of the community.

The evidence all leads to the conclusion that were it not for the presence of the State Police, and their protection, that the information that was available, made available to our mediators, could not have been given because of the fear of the workers in giving that testimony.

Q Was that investigation conducted under your immediate supervision?

A Yes.

Q Will you state briefly the findings that were made as a result of that investigation by the Department of Labor?

A Well, the findings indicated, first, that union or-

ganizers who would come to Aliquippa to attempt to organize the employees of the Jones & Laughlin Company, had been treated with such force and vigor by the deputy sheriffs and the company police, one in particular instance is reported here in an affidavit of the representative of the union being beaten up so badly that he had to leave town. The organization in Aliquippa at that point ceased, but organization in Ambridge, a steel town a few miles away from Aliquippa on the other side of the river, continued.

The employees of the Jones & Laughlin Company attempted, some of them, to go to Ambridge to attend meetings at Ambridge. When they did this, they were followed over to Ambridge by the Jones & Laughlin, Aliquippa, police, and threatened for going to the meetings, and there is evidence to the effect of actual physical harm that had come to them because they had attended these meetings.

There is also a very definite evidence of the discrimination against them, dismissal from the company, less time permitted to work because they were members of the union.

The company police, always armed, not only followed employees who went to the meetings in a community outside of Aliquippa itself, but there is evidence in this record of a company police entering the home of one of the workers in Aliquippa, searching his trunk without a warrant to enter his room, getting from his trunk the cards of union members which he had in that trunk, and taking them away with him.

There are about eighteen exhibits in this report, giving the sworn statements of a number of workers, as to situations such as these that I have described.

Q Did the report contain conclusions or recommendations with respect to what action should be taken?

A Yes.

Q What were they?

A The report—one statement in answer to the

question that was asked before that perhaps should be put in the record, is that none of the union members in the community were permitted to rent any hall for the meetings of the union workers, in the town of Aliquippa, up until the point that the State Police came into town. At that point they were permitted to rent a hall, and with the renting of the hall, and with less duress because of the presence of the State police, the organization of the workers developed.

The workers had asked for an election from the Steel Labor Board to determine the right to bargain collectively with the Jones and Laughlin Company, and the report which was made by the Labor Department definitely recommended that an election be held, as the one way to settle the question, as to whether or not the workers were organized and might bargain collectively with their employers, and that is the recommendation of this report to the Steel Board.

Q Did the Department of Labor find that the practices of the Jones & Laughlin Company, as you have indicated them, result in unrest in the plant?

A There is no question but what there was considerable unrest and growing unrest.

Q And the Department of Labor felt that the holding of an election would tend to alleviate a certain amount of that unrest?

A It would tend to settle the question, in the fairest possible way, it seemed to the Department.

Q Now, from your experience in the Department of Labor could you state generally the attitude of other steel companies in the State of Pennsylvania, with reference to their employees and organization by their employees?

A We have reason to believe, and many reasons—and we have no reason to believe that the situation as it was found in Aliquippa was very different from that of the situation in almost any company steel town in the western part of the State.

Q Upon what sort of evidence do you base that statement?

A The reports which are in the files of the Pennsylvania Department of Labor, and Industry, from the mediators of the Labor Department who were called in, in times of disputes or labor troubles.

Q Would you say that the result of these practices by the steel companies was to create unrest in the plant, in the plants?

A There is no question but what unrest started at the plant at which there was any indication on the part of the workers to organize.

MR. CARMODY: May I ask a question at thnt point?

BY MR. CARMODY:

Q You said that the situation in Aliquippa was, so far as your information went, no different from that in other steel company towns in western Pennsylvania; what would be some of those towns, and what would be some of those companies that have well-known steel towns?

A It is absurd that I can not answer that question with a long list of towns at once.

Q Would Homestead be one?

A Homestead would be.

Q Would Clairton be an example?

A Yes.

Q And McKeesport?

A Yes, sir.

Q McKees Rocks?

A Right.

Q Would Monessen?

A Yes.

Q Vandergrift?

A Yes.

Q Ambridge?

A We had very definite indications, and official reports on Ambridge.

Q Rankin?

A Right.

All of the towns in Fayette County, too.

BY MR. EMERSON:

Q From your experience in the Department of Labor, would you say that there was generally among the employees of the steel industry a desire or an inclination to organize for collective bargaining?

A There was unquestionably an increased or more articulate desire of the employees to organize in 1934 or following the Section 7A of the N. R. A.

Q Would you say that aside from Section 7A of the N. R. A., there was in inclination on the part of employees in the steel companies to organize?

A A growing inclination.

Q If there is such a desire on the part of employees to organize, and the employers resist their attempts at organization through practices which you have outlined, what methods are left to employees by which to achieve their organization?

A With the custom, the practice of the deputy sheriffs, the civil liberties of the employees and their opportunities to organize, particularly in a company town, are very limited, without doubt.

Q By what method could they achieve organization, in the face of such opposition?

A I know of no method that they could achieve it without outside help, either from the Federal Government, through such an organization as the National Labor Relations Board, through what effort they could get from the State—the Federal control, of course, is more effective.

Q If there were no government intervention in such a situation, would it naturally, or would it be likely to lead to industrial strife in an attempt to secure organization?

A It only is a question but there would be industrial strife, and in fact the government interference has usually come because of industrial strife.

Q I show you this document and ask you if that is a copy of the report made by the Department of Labor under your supervision, to the National Steel Labor Relations Board, together with exhibits attached to the report?

A That is.

MR. EMERSON: I offer this report in evidence, and ask permission to have a copy made for the record.

CHAIRMAN MADDEN: It is received in evidence, and will be marked.

(The paper referred to was received in in evidence and marked as Board Exhibit Nos. 44-A and 44-B, Wheeling Steel Corporation; Board Exhibit No. 87-A and 87-B, Jones & Laughlin Steel Corporation; and Board Exhibit No. 32-A and 32-B, Crucible Steel Company of America.)

BY MR. EMERSON:

Q Would you explain what is meant by company town?

A A company town would be a town in which the company itself owned or controlled most of the stores or businesses, and the policing and even the utilities of the town. There are degrees to which that control would hold; some towns, the company would own all of the facilities in the town and other company towns they would control but not own.

Q They ordinarily own the houses?

A Yes.

Q Are these towns incorporated or unincorporated?

A I don't know the answer to that question.

CHAIRMAN MADDEN: Thank you very much, Miss Carr.

(WITNESS EXCUSED)

MR EMERSON: We have no further witnesses at this time, and we would like to call Mr. Fitch tomorrow morning.

CHAIRMAN MADDEN: We will recess until four o'clock and resume at four o'clock.

(Whereupon, at 3:00 p. m., a recess was taken until 4:00 o'clock p .m., when the hearing was resumed as follows:

Whereupon

JOHN A FITCH

assumed the stand on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EMERSON:

Q Will you give your name to the reporter?

A John A. Fitch.

Q What is your present residence?

A New York City.

Q What is your present position?

A I am a member of the faculty of the New York School of Social Work.

Q Would you state the experience you have had in dealing with the problems of labor relations in the iron and steel industry?

A Why, it goes back to 1907. In that year, I became a member of the staff of an organization called the Pittsburgh Survey, which made a study of working and living conditions in the City of Pittsburgh, and my particular assignment was conditions in the steel industry.

That went on for about a year, and I published a book entitled, "The Steel Workers," dealing with hours, wages, union conditions and so on, and after an interval of about three years, I again was retained by the Survey to make a study of conditions in other steel centers in the United States and I spent about a year doing that.

That was in Bethlehem, Pennsylvania; Gary, Pueblo, Colorado, Birmingham, Alabama, and a few other centers not quite so important, and I published a series of articles in the Survey Magazine in 1911.

I also visited England at that time and made a brief study of conditions in the British steel industry.

After that I became the industrial editor of the Survey Magazine, and studied—it was my business to study labor conditions of all sorts, and I continued to keep in touch with the steel industry from time to time occasionally events occurred that took me into the field as a strike in Youngstown, Ohio, a few years ago, after I had become interested with the Survey, and the 1919 strike, the big strike in the steel industry, and I also followed that up with a special study made in the summer of 1920, in Pittsburgh, and other centers, in order to discover what the effect of the strike had been, and at other intervals, other periods, I have dropped into the steel districts, in order to discover what was going on, and my most important excursion of that sort was last fall when I spent about six weeks in Chicago, and Gary, and Pittsburgh, bringing my information up to date.

Q Would you state what books you have published, and you are the author of?

A The "Steel Workers" published in 1910 or 1911; and the book entitled "The Causes of Industrial Unrest" published in 1924, and a recent book which is perhaps irrelevant, "Vocational Guidance and Action."

Q Have you been connected with any university as lecturer?

A I was lecturer in economics at Columbia University for two years; and in two or three summer sessions; I also lectured at the University of Minnesota, in one summer session.

Q Now, would you describe the labor relations in the steel industry, in the early period of the iron industry, and up to 1892, particularly the relations of the union to the companies?

A That was a period in which the iron industry reached its peak, and began to decline before the rising steel industry. The Amalgamated Association of Iron and Steel Workers came into being in 1876, and grew fairly rapidly, until it became the dominant factor, so far as labor was concerned, in the iron mills in the Pittsburgh district, and to a considerable extent in other districts.

During the 80's, the union established itself pretty thoroughly in those mills and the relations with the employers seemed to have been rather amicable. The union had an annual picnic, for example, and the iron companies used to suspend operations on the day that the union had their picnic, so that the men could all go to it, and the union sometimes invited the officers of the companies to go to the picnic also, and sometimes they did, and made addresses to the workers, and the steel industry, one might say, really got under way in the late 70's, and the unions' greatest success in that area was in the Homestead plant of what became the Carnegie Steel Company.

That became pretty thoroughly organized, and other steel plants began to be organized, the South Works of the Illinois Steel Works in Chicago were pretty well organized, and Jones & Laughlin, in Pittsburgh, recognized the union, and there were quite a number of independent companies of lesser significance.

Q Did the Amalgamated Association have agreements with the members of the iron industry at that time?

A Do you mean with individual plants?

A Yes, very generally in the iron industry.

Q To what extent did those agreements exist in the steel industry?

That is, previous to 1892?

A To a lesser extent, but there was a continuous agreement at the Homestead plant, which was the leading plant of the steel industry, from about 1882, or

thereabouts, until 1892, when the famous Homestead strike eliminated the union.

Q Would you say that in that period, up to 1892, the relations of the Amalgamated with the companies that it had agreements with were in general harmonious relations?

A In general, I would say so, with the exception of those differences of opinion that do exist frequently at the time of the expiration of a contract, and sometimes there would be strikes before a new contract could be negotiated.

Q Now, there was a strike at the Homestead plant of the Carnegie Steel Company in 1892, was there not?

A Yes.

Q Would you state the causes of that strike?

A Initially, that strike came about because of the demand for an increase in wages which the company refused, but it became evident in a short time that it was the intention of the company to do away with the union, and before the strike had been on for more than a week or so everything else was lost sight of, and the strike was carried on for the purpose of preserving the union.

Q Would you describe briefly the events of that strike?

A Well, H. C. Frick was the president of the Carnegie Steel Company, and he seems to have been determined, and an independent sort of employer, who was determined to have his way with regard to labor condition. One would gather that he intended at the beginning of the strike to eliminate the union.

He made arrangements with the Pinkerton Detective Agency to supply him with a large number of guards, several hundred, who were brought into the Homestead plant in the night, on barges, on the Monongahela River; and when they attempted to land, the strikers met them, and a battle ensued, which resulted in some loss of life, and a considerable degree of injury, and resulted in the surrender by the Pinkertons, and

they went out of town, and an agreement that had been made by the union.

After that the State Militia was called in, and the town was under military guard from then on, to the end of the strike.

Q Can you state how many employees were involved in that strike at the Homestead plant?

My best recollection is about 2,500. I couldn't be sure of that at this time.

Q Could you estimate the duration of the strike?

A It began some time in June, and I think it went on until August or September.

Q Now, what was the result of that strike so far as the union was concerned?

A The strike was lost by the union, and the plant was operated as a non-union plant, and at the same time it lost out in several other Carnegie mills, smaller Carnegie mills, and the situation seemed to have an effect upon the other steel companies, and the union began to go down hill from that time on.

Q Were there strikes in other Carnegie plants at the same time as this Homestead strike?

A Yes.

Q Do you know about how many employees were involved?

A I couldn't say now, but a smaller number than in the Homestead plant.

Q Were there efforts to revive the union in the Homestead plant after the strike?

A There were several efforts made to reorganize, and they were defeated in every case by the discharge of the men who were active in organizing the union.

Q Now, what was the situation so far as the union was concerned in other parts of the industry, up to the period ending the Homestead strike, and up to the formation of the United States Steel Corporation?

A The union held its ground; that is, it maintained a lodge, which was recognized in the South Works of the

Illinois Steel Company, but in the Pittsburgh district it was on its way out, and it was running down hill through that period of time.

Q Did the union exist in the Jones & Laughlin plant at that time?

A Yes; and that company ceased to have dealings with them in 1897.

Q Now, when was the United States Steel corporation formed?

A In 1901.

Q What policy did the corporation adopt with respect to labor organizations?

A The position of the Steel Corporation as indicated by a resolution adopted by the Board of Directors early in its career, in 1901, was that they would not recognize trade unionism in any of their plants where it was not already in existence, and they would oppose any extension of it.

Q Was there an attempt shortly after the formation of that company, by the union, to organize the plants of the United States Steel Corporation?

A Yes, the Amalgamated Association of Iron, Steel and Tin Workers attempted to secure an extension of recognition to other plants of the Steel Corporation, and when the Corporation, or when the subsidiary companies of the corporation refused to sign, they went on a strike, and that strike lasted through a considerable part of the summer of 1901, and ended largely in failure.

Instead of extending the scope of the union, the company finally signed for a smaller number of mills than it had before.

Q Did that strike involve other plants than the United States Steel Corporation?

A I don't think it did. It was entirely a Steel Corporation matter.

Q How long after the strike of 1901 did the Steel Corporation continue to deal with the workers that it made agreements with?

A It continued to deal with several, in several of its sheet and tin plants. It continued to deal with the union until 1909, and then notified the union that it would not deal with them any further in any of its plants.

Q Was there a strike at that time?

A The union called a strike, in an effort to maintain itself, and the strike was lost, and from that time on the Steel Corporation had no further dealings with Amalgamated Association.

Q That is true down to the present day?

A Well, not entirely true, not in the sense that it was true up to the time of the adoption of the Recovery Act. Since that time, trade unionism having gotton under way to some extent again, the company has had what you might call conversations with representatives of the union, but it hasn't dealt with them or recognized them.

Q Now, going back to the period after the formation of the United States Steel Corporation, in the period between 1901 and 1910, what was the situation in other parts of the industry? Did the union deal with any other industry during that period?

A It was not recognized in any of the large independents such as the Jones & Laughlin or the Bethlehem Steel Company, but it did continue to have agreements, and to have recognition in a number of independent sheet and tin plants, as well as a number of the remaining smaller iron mills, in Ohio, and Indiana.

MR. CARMODY: May I ask a question at that point:

By Mr. Carmody:

Q Do you know whether or not their agreements with A. M. Beyers, for instance, continued over a longer period of time than with some of the other companies?

They are a leading wrought iron pipe manufacturer in the Pittsburgh area, with a plant on the South Side of Pittsburgh, and a plant at Girard, Ohio.

A In 1907, at the time of the Pittsburgh Survey,

there were union men in the Beyers plant, but whether they had an agreement or not, I can't recall.

Q They changed their process from hand puddling to mechanical puddling some few years ago, and built this new plant down at Economy, and I don't know whether they are continuing union arrangements or not.

A I don't know anything about that plant.

BY MR. EMERSON:

Q Were there any strikes of substantial importance in the period of 1901, and 1910, aside from those you have testified, with respect to the Steel Corporation?

A I don't recall any.

Q Was there a strike at the Bethlehem Company in 1910?

A Yes, there was a strike at the Bethlehem Company at its Bethlehem plant. That came about because the machinists had been working pretty steadily on Sunday, and they appointed a committee to go to the management to object to Sunday work, and the management dismissed the committee, instead of negotiating with them, whereupon the machinests went out on strike in support of their committee, and then other departments came out also, and the strike was on for quite a period of time.

MR. CARMODY: You mean, discharged the members of the committee?

THE WITNESS: Yes.

BY MR. EMERSON:

Q What was the result of that strike?

A It was not successful, and the men finally came back to work without having secured any concessions at all.

Q Would you say that that attitude of the Bethlehem Steel Company was similar, or typical of the attitude of the large steel companies at that time?

A I should say so, yes. When committees were sent to the management, particularly around that period,

if the men were without any organization, and that was the case at Bethlehem, they had no organization.

If a group of men appointed a committee to carry a petition to the management, they were in danger of discipline, not only Bethlehem, but at other plants.

Q Now, would you describe the labor policy of the large steel companies in the period from 1910, up to the strike of 1919?

What was their attitude toward labor organizations?

A They were wholly opposed to labor organizations, and labor organizations made no headway. That was a period when the attitude toward inaction continued to be of the sort that I have described, not only opposition to trade union organization, but opposition to any sort of collective action, such as the appointment of a committee.

Q What methods did the companies use at that time in resisting the organization of employees?

A Well, a characteristic institution of the steel industry was a spy system, which brought reports to the management of the attitudes on the part of the men, and indicated their interest in unionism, in meetings that they might hold, and when it was known that they were going to have a meeting, the foreman would usually stand in front of the place of meeting to see who was going to attend, and take the names, if possible, of men who were attending, and sometimes there were cases where men held a meeting on a vacant lot at night, and flashlight photograhs were taken, in order to acquaint the management with the personnel, of the persons present.

Q Coming now to the strike of 1919, would you state the causes of that strike?

A The original cause was the effort on the part of the American Federation of Labor to organize the industry. The A. F. of L. Convention of 1918, I think it was, passed a resolution to organize the industry, and that was adopted in 1918.

At any rate, at a convention of the American Federation of Labor, preceding the beginning of the strike —it was at the St. Paul Convention, whatever year that was—a resolution was adopted to organize the industry and create a committee for the purpose of carrying on that campaign.

John Fitzpatrick, of the Chicago Federation of Labor, was chairman of the committee. William Foster was the executive secretary. And the campaign for organization went on in all of the principal steel centers, until a very large proportion of the workers in the industry had indicated their intention or actually joined the Union?

BY MR. CARMODY:

Q Do you know how many of the international unions had representations on that committee?

A There were twenty-four of them.

Q International labor organizations?

A Yes, affiliated with the American Federation of Labor.

BY MR. EMERSON:

Q Your testimony is that the strike was due to this effort to organize the industry?

A Having succeeded in organizing the industry, the officers of this Committee addressed a letter to Judge Gary asking for a conference for the purpose of dealing with grievances and negotiating an agreement, and Judge Gary and the other officials of the steel companies, refused to grant such a conference.

They replied that this organizing committee didn't represent their men, and that they didn't have any organization in the mills of the United States Steel Corporation, and therefore there wasn't anyone to meet.

John Fitzpatrick in his reply said that if that was their attitude, there would be no way by which he could prove his leadership except by putting a strike into effect, and so the strike came shortly after that, and in the neighborhood of three hundred and fifty thousand

men went out on strike in the various mills of the country.

Q Going back just a moment, would you say that this effort on the part of this committee comprising twenty-four unions, met with ready response among the employees of the industry?

A Apparently it did. The movement was very rapid, and very successful, so far as bringing men into the Union was concerned.

Would you state the working conditions in the industry with respect to which the employees and the unions wished to bargain, with the companies?

A First of all they wanted collective bargaining, and one of the grievances that they listed, after the strike began, they drew up a list of grievances, was the refusal of collective bargaining.

They asked for an increase in wages, but the primary grievance was the existence of the twelve hour day and the seven day week; and aside from the movement to organize which was a step preliminary to dealing with that situation, I should say that the primary cause of the strike would be the working conditions, and long hours.

Q Now, will you describe briefly the events of that strike, and the number of employees involved, and the duration of the strike.

A The strike began about the middle of September, 1919, and was called off sometime in January, 1920, and at the heighth of it there were probably more than three hundred and fifty thousand men on strike.

It resulted in some of the very large mills of the country being practically idle, and the plant at Johnstown, Pennsylvania, was entirely down, the plants of the Carnegie Steel Company in the Pittsburgh District were very seriously crippled, and the steel industry, I should say, was very seriously affected in September and October, and then the men began to drift back to work, until the situation was not so serious for their companies.

But probably one hundred thousand men were out at the time the strike was called off.

Q Were the plants at Gary, in South Chicago, closed down?

A I couldn't say they were closed down, but I wasn't there at the time. I was in the Pittsburgh district, but I know that Gary was very seriously affected —I don't know that it was closed down.

Q Would you describe the methods which the steel company used in resisting the strike?

A I suppose the most important thing that can be attributed directly to the steel companies was the advertisements that they put in the papers, and he general publicity designed to convince the public that the strike was revolutionary in character.

It was claimed at the time that the purpose was to set up a soviet form of government, and that was very generally circulated and believed to a very considerable extent by newspaper readers. Full page ads appeared in all of the Pittsburgh papers, making allegations of that sort.

Now, there was a very active cooperation with the steel companies on the part of public officials. The sheriff of Alleghany County issued a proclamation that no street meetings could be held by more than three people, and if there were as many as three people gathered on the street corner, the deputies were authorizd to disperse them.

Whether that actually included inside meetings, there was some question about, but I called on the headquarters of the Union, in MacKeesport, at that time, and found an organizer there, and a secretary, and because my presence made three people they were considerably ill at ease, and were afraid that a trooper would come in from the street and disperse us at any moment, so I wasn't able to talk with them very effectively, and I had to leave without getting all of my questions answered.

The mayors of towns, or the Burgesses, as they are called, in the village form of government in Pennsylvania, took an active part in preventing the Union from holding the meetings, and the famous statement of the Mayor of Duquesne is well known, I believe, when he said that if Jesus Christ wanted to hold a meeting to organize a union, in Duquesne, he couldn't hold it.

Q What were the results of the strike of 1919 so far as the union was concerned, so far as organizations were concerned?

A So far as organizations were concerned, it was a complete failure. It is interesting to note that three years afterwards, on the initiative of the President of the United States, the companies decided to abandon the twelve hour day.

Q Now, in the period from 1919 to 1933, were there any substantial strikes occurring during that time?

A I don't know of any of importance.

Q What were the policies of the leading steel companies during that period?

A Their attitude continued to be one of opposition, a determination to maintain their non-union status of their mills. I might say in that connection that while these strikes have occurred at infrequent intervals, there has always been a clean desire on the part of the workers to have some sort of organization.

In the absence of organization, they haven't felt free to assert themselves. No one wanted to jeopardize his own job, and individuals here and there would be picked off if they showed themselves active. I remember meeting an ex-employee from the Gary plant, in Ohio, a number of years ago, who showed me his discharge slip on which was written, "On account of union agitation."

He told me that he was an electrician, and he had served as Secretary of an embryo lodge of the electrical workers union, and they hadn't affected an organization, and he had merely taken the names of his asso-

ciates and their dues and forwarded them to headquarters, and he was discharge for that.

Now, that sort of thing, of course, becomes widely known and an individual hesitates to jeopardize his job. If there were an organization that would protect a worker, he could afford to become a member of it, and he could afford to join it, but he can't afford to take the initiative and be the first one to join a union, under a regime of that sort.

MR. CARMODY: You mention the Gary plant—do you refer to one of the largest plants of the Steel Corporation in Gary, Indiana, a town that was especially built by the Corporation and named "Gary" after the Judge Gary who was chairman of the Board?

THE WITNESS: Yes, that is the one.

MR. CARMODY: And this man that you speak of came from the Gary Plant, and he had been dismissed there for union activity, and you found him in Ohio?

THE WITNESS: Yes.

BY MR. EMERSON:

Q In general, would you say during this period, you would say that the practice of espionage, and anti-union practices, continued on the part of the steel companies?

A Yes, sir; there have been several publications that would indicate that. Sidney Howard's book "The Labor Spy," and the study made by Frank Palmer, of conditions in the iron mines, in Minnesota, indicated that there, too, in the mines, operated by the steel companies, the same system of espionage existed.

I might state that I got acquainted with the head of the spy system of the Carnegie Steel Company in 1907, and he told me that he was the head of it, and that he maintained a wide-spread organization for the purpose of discovering any agitation or union activity. That organization continued for a long period of time.

Q Now, was there a further effort to organize the steel industry in the period from 1933 to 1934?

A After the passage of the recovery Act, with its Section 7 (a), there was an impetus in the direction of organization. I might mention one thing to indicate that the attitude in general in the steel districts has not changed, that just precedes this a little bit.

This story had appeared in the press at the time, just before the adoption of the steel code, that Secretary Perkins went to Pittsburgh, to acquaint herself by first-hand inquiry, with conditions existing in the mills. And she had a conference in the office of the Burgess, I believe it was, with steel company officials and some others, and while she was there a telegram was placed in her hands that had been sent to her by a man in the street, who hadn't been able to get in, saying that he represented a large group of workers, who wanted to confer with her about conditions prevailing, and that they had all been prevented from coming in, and would she come out to them.

She did and found quite a group of men in the street, and the Burgess hurried out after her and said that they couldn't have a meeting on the steps of the Municipal Building. She noticed a little Park across the way and suggested that they go over to the Park, and the Burgess said that she couldn't have a meeting with the steel workers anywhere in the Borough of Homestead.

And then it occured to someone that the Post Office was United States property, so the Secretary of Labor went to the Post Office, and the men came with her and they had a meeting in the Post Office.

Q Would you describe briefly the events leading up to the threatened strike of 1934?

A Well, the impetus given to the Union movement by the passage of the Recovery Act, particularly with Section 7 (a), manifested itself in the steel industry as elsewhere, and the Amalgamated Association increased its membership to a considerable degree.

Q Would you for a moment explain in what way section 7 (a) gave an impetus to the organization.

A Well, I didn't know that I would have to state here what was implied in Section 7 (a), but—and you don't want me to quote it. But in view of the fact that that section 7 (a) declared that the workers do have a right to organize, and that they do have a right to select representatives and through them to bargain with their employers, and that it is illegal for anyone, employers or others, to interfere with that right, they felt that they were now freed from these restrictions, and that the steel companies and other companies imposed on them, and now it would be safe to organize, and they wouldn't lose their jobs.

So the Amalgamated Association considerably increased its membership at that time, and there began to be a good deal of feeling on the part of the membership that some action should follow, and that they should get an understanding with the steel industry.

This pressure became so active on the part of a certain group in the Union, that they called themselves the Rank and File Movement, in order to differentiate themselves from the officers of the Union, who were not moving very much, as it seemed to them.

Now, as a result of this, it was at a special convention held in Pittsburgh, by the Union, it was decided to make a demand of all of the steel companies, for recognition, and so in one way or another, either by personal word or by communication through the mail, most of the managers of most of the plants in the major steel companies of the country, were communicated with, and asked to meet a committee of the Union.

That demand was refused in every case, and as a result of that the Union called a convention, and voted to have a strike.

The Administration in Washington interested itself in the matter, and it was about that time that Resolution No. 44, that is the number I recall, authorizing the President to appoint special boards to deal with

particular industries was passed, and as you know, a Steel Labor Relations Board was created.

In view of that, the Union decided not to call a strike, and instead to place its demands and its grievances before the Board.

Q Will you state whether or not at this time there was an increase in growth of employee representation, and what the cause of that was.

A The Company movement grew, I suppose, more rapidly that the union movement, affiliated with the American Federation of Labor, and the reason for it was that the companies, recognizing that they would be called upon to deal with their employees collectively as required under Section 7 (a), felt that they could do so more advantageously to themselves if they had an organization of their own employees alone, and not influenced by any outside agency, and therefore without leaders who were not their own employees.

The movement was very wide-spread throughout the industry, and I suppose in all of the important plants, and the important steel plants of the country, such company unions were set up, entirely on the initiative of the employer, and in the majority of cases, I should say, set up under conditions as to leave a considerable part of the control of the organization in the hands of the companies.

Q Would you describe more specifically the extent to which those company unions were dominated by the companies?

A Well, it was indicated first of all by the notification that went out from the President of the company to the men. It was, curiously enough, the same letter in identical terms, in agreat many cases, and not—

MR. CARMODY: You mean separate corporations?

THE WITNESS: Yes, not only were they identical letters sent out by the Presidents of subsidiary companies of the United States Steel Corporation, but the

same letter was sent by the presidents of other companies not a part of the United States Steel Corporation, and those letters, most of them, stated at the outset that the company had inaugurated a scheme or a plan of employee representation, and in most cases, those plans went into effect without any vote on the part of the employees as to whether or not they would accept them.

Usually, a date was set in the near future for an election, to elect representatives of the plant, and the companies took the position that when the men voted for representatives, that the act in itself constituted an acceptance of the Union or of the plan, but in most cases there never was a formal vote to accept or reject.

BY MR. EMERSON:

Q Were these unions ordinarily financed by the company?

A They were financed to this extent, that the representatives elected by the men were encouraged to hold these meetings, they met with the company officials on company time, and they received their equivalent of the pay that they would have earned if they had remained at their jobs.

Now, there were some cases where in addition to that a regular salary was paid to the representative, so that they earned their regular pay all of the time, plus a salary. That was true in the Wierton Steel Company, and I don't know to what extent it was general, but I have heard of one or two of the other places where that seems to be true.

Q Will you state the recent developments in this company union movement?

A Well, the most significant things, I think, tending to show that there is unrest in the steel industry, and dissatisfaction with the present set-up, is the very fact that representatives under the company union plans have indicated in quite a number of ways that they want those plans improved or that they want something else substituted for them altogether.

Do you want me to mention any details with respect to that?

Would you give one or two specific instances of that?

A At the South Works of the Illinois Steel Company, last August, I think it was, the representatives under the Company Union Plan, voted to organize an independent union, and it wasn't a unanimous vote but a majority of the representatives voted to establish this union, so they engaged a hall, and they circulated handbills in the name of the Company union, saying that the meeting would be held for organization purposes, and they established an independent union, not connected with the A. F. of L., and not a company union, but a spontaneous movement of the men, which has enlisted several thousand—I wouldn't want to be too sure about that—but probably by this time about two thousand workers.

At Gary, after several sessions of the representatives of the Company Union, to discuss this matter, they voted in December to put the membership at large, that is to put to the employees in the plant, at large, the question of whether or not they should affiliate with the Amalgamated Association of Iron, Steel and Tin Workers.

A majority of the representatives were in favor of that action.

In the American Sheet and Tin Plate Company, an effort was underway or is underway now to create what would be in effect a company-wide union, and they held a convention last September for the purpose of re-vising their constitution, and making it more completely a workers' movement, and there is a similar movement now going on in the plants of the Carnegie Steel Company in the Pittsburgh district.

MR. CARMODY: May I ask a question there. Could you give some idea of where the principal plants of the American Sheet and Tin Plate Company

are located, which these men come from? Just a few of them, the important ones.

THE WITNESS: I think the largest one is at Vandergrift, Pennsylvania, which is one hundred miles or so from Pittsburgh. There is a large plant at Gary, at Gary, Indiana, and New Castle, and two or three others in smaller places in Indiana. There is one at Martin's Ferry, Ohio, I believe.

MR. CARMODY: That is all.

BY MR. EMERSON:

Q This movement in, I believe you testified, in the Chicago plant, what was it that the employees were demanding of the Company.

A They were not demanding anything of the company. They haven't communicated with the company, or hadn't at the time that I knew what they were doing, but simply trying to organize.

Neither have the men at Gary demanded anything of the Company, but merely expressed dissatisfaction with the present set-up, and as I say, a majority of the representatives have said that they wanted to affiliate with the American Federation of Labor, or with the Amalgamated Association of Iron, Steel and Tin Workers.

Q Now, coming to the present situation in the industry, does the Amalgamated Association still exist as an organization.

A Oh, yes.

Q Does it have at the present time relations or working agreements with any of the companies in the industry?

A It has had continuous relations for a great many years with certain iron companies, manufacturing wrought iron, and a number of small companies, chiefly, I think, in Ohio and Indiana.

They have had continuous relationships with those companies for at least thirty years, and I imagine some of them for as much as fifty years. They have working

agreements with some small independent sheet steel companies.

MR. CARMODY: Excuse me a moment. I didn't know that you were leaving that company union question there. I would like to propose a question.

BY MR. CARMODY:

Q Do you know, Mr. Fitch, whether or not the United States Steel Corporation brought in an expert or a specialist in industrial relations, labor relations, to set up this employer representation plan?

A It had already been set up at the time that they brought in Mr. Arthur Young, who is a well known figure in the field of personnel, and Mr. Young succeeded in changing the character of the set-up somewhat. I don't think that Mr. Young inaugurated the plan in any of the plants. It was already there, but it was not in accord with some of the requirements of Section 7 (a).

For example, most of the plans as set up for that time forbade any representation, forbade the election of any representative who was not an employee of the company, and Young succeeded in changing that, in one or two other ways squared it up with the requirements of Section 7(a), in so far as outward appearances is concerned.

Q Do you know whether he had had previous experience with these representation plans, and company unions.

A He had been with the International Harvester Company, which has had a company union a good many years, and whether he had a hand in that, I don't know. But he was there after it had been organized.

Q And was part of his responsibility there the administration of that plan at International Harvester?

A I suppose so, but I don't know in detail.

Q There has been a good deal said about employers not wishing to deal with anybody but their own employees, and not wishing to have outsiders brought in the industry.

I wondered whether Mr. Young, who had been in other than the steel industry, might be considered an outsider in the steel industry, to re-organize company unions.

A I think that the same question might be raised when attorneys such as the former Governor of the State of New York is brought into assist the company in drawing up a code, let us say, under the Recovery Act. And a very important part of that code deals with labor.

Q You said that this representation plan had been worked out before Mr. Young came in. How recently was the plan inaugurated with the Corporation?

A Oh, the plans were put into effect, the original plans were put into effect very soon after or perhaps even before the Recovery Act became a law. That was in June of 1933.

Q So that there had been no form of representation between the time of the Homestead strike, let us say, and 1933, no formal arrangement for representation on the part of the men in the industry.

A No.

CHAIRMAN MADDEN: When you say that some of these plans antedated the passage of the National Recovery Act, you mean that they just antedated them, and anticipated that.

THE WITNESS: I said that they may have. It was all done so rapidly, that it is conceivable that some of them were adopted before the Act was actually signed by the President.

But it was all in connection with, and because of the emminence of the taking effect of that Act?

BY MR. CARMODY:

Q Of course, that is not true of the Bethlehem Steel plan. That is an older one?

A Yes, going back to war times.

Q Do you know when Jones and Laughlin introduced the employee representation plan, that was referred to?

A I am not exactly informed on that, but I never heard of it until recent years, and I assume it was one of these in the NRA crop.

BY MR. EMERSON:

Q Would you say the recent development in company unions, indicated that that method of organization did not satisfy the employees, in their desires to organize and bargain collectively?

A I should say that it indicates that, and something else.

In a way, it is a compliment to the companies. They have given the men an opportunity to express themselves, that they hadn't had before. The opportunity to get a grievance up for consideration exists, under this plan, as it never existed before. Instead of discharging men because they presented agreements, the company union plan almost insists upon their presenting grievances.

Now, the men having had an opportunity to do that, they became dissatisfied not altogether because the plan worked so badly, and in some cases that may be so, but they became dissatisfied also because a plan which works better than what they had before reveals to them how it could be still better, if they had something more completely in their own hands.

Q Would you say that these plans as drawn up by the company were effective mediums, or constituted effective mediums for collective bargaining?

A I should say no. They are effective as agencies for petition, but the final decision rests entirely with the company.

Q Would you say that in order for it to be effective it would have to be free from domination or interference by the company?

A Of course, no arrangement between employers and employees can be free from what might be called dominance or interference, because the employees are bargaining with the employer, and the employer has his

interests to protect, and he will protect them, just as effectively as he can.

The question is not that of whether or not the company is capable of getting its way, but the question is whether there be bargaining strength on the part of the employees, so that if they are unable to get their way, they may choose the alternative of exercising their strength which ultimately of course would be in the form of a strike.

Now, I should say that one tremendous difference between the company union and the independent union, or the outside union, the union which is part of a general labor movement, is that the company union is not in a position to resort effectively to the weapon of a strike and therefore it is a weak bargaining agency, and the employer is in a much better position to have his way.

Now, whether you call that dominance, I see no reason for characterizing it as a vicious thing, as one might think it is if you call it dominance. The strong bargainer always dominates to a certain extent, and I should say that in the presence of the company union the employer is pretty apt to get his way on everything that is important.

If there be a strong union, with affiliations with other bodies on the outside, it is in a position to bargain very much more effectively, and therefore to cause the employer who is in that position to hesitate about putting into effect a decision which he has the legal power always to put into effect.

Q What efforts are being made at the present time to organize the employeers in the steel industry for purposes of collective bargaining.

A The last convention, or the 1934 convention of the American Federation of Labor, adopted a resolution directing the Executive Council, to proceed in the direction of organizing the steel industry.

That action was held in abeyance, partly because of

the internal difficulty within the steel workers union, So nothing was done during that year.

In 1935, the convention of 1935, the matter was taken up again for consideration, and it was decided to go ahead effectively to organize the steel industry. I understand that the Executive Council, acting in accordance with that in January, I believe, decided to go ahead and take effective steps, precisely what is going on I don't know.

I know that the Amalgamated Association itself is carrying on an organizing campaign, to a certain degree, and the membership has increased somewhat, and that there is a very active interest in that campaign, throughout the industry.

Q Has the Committee for Industrial Organization taken an interest in this campaign?

A I understand that they have: They have made pronouncements with regard to it and offered financial help in the direction of the organization.

Q Now, just for the purpose of summarizing to a certain extent, would you say that there have been in the industry, in the steel industry, re-current efforts on the part of the employees to associate themselves together for the purpose of collective bargaining?

A Yes.

Q Would you state what the factors were, which led to their desire to organize?

A The desire that exists among workmen everywhere, or let us say among human beings, to have something to say about bargaining, or about a bargain, to which they are a part. It is just a natural human desire that exists everywhere, and specifically with regard to the steel industry, that their long experience with working hours, of a length greatly in excess of that generally prevailing in industrial work elsewhere, their experience in being discriminated against when they attempted to seek improvement in their working conditions, has also been a factor in a desire on their part

either to continue an organization when they had it, or to re-establish the organization when they lost it.

Q Would you say that there is, or the inequality of bargaining power between an individual employee, and a large steel company, has any relation to their desire to organize?

A Oh, yes, precisely. The individual has no power at all, and it is only through organization that they can have any power, with respect to their conditions.

Q Having this more or less continuous need of organization, and the re-current efforts to organize, would you also say that the policy of the steel industry, or the larger companies of the steel industry, have been to an action to oppose such organization?

A Since 1892, I would say that that has been the established policy of the larger steel companies.

Q And the methods of opposition have taken forms which you have described?

A Yes.

Q Would you say that that situation has led to re-current industrial unrest and strife?

A I should say that the un-rest has been continuous, and that there have been re-current strikes or other manifestations of dissatisfaction as a result of it.

Q Would you say that that strife could be eliminated by any method short of prohibiting by law, employer opposition to self-organization, or by the success of the employees themselves in obtaining a strong organization?

A Well, any un-rest that exists because of the absence of organization, would doubtless be allayed by its presence. I don't know whether I am quite meeting your question.

Q Well, so long as this situation exists, would you say that un-rest would continue?

A Oh, yes, absolutely inevitable.

Q And would you say that the elimination of certain unfair labor practices by employers would eliminate that un-rest?

A It certainly is the only road through which progress can be made in the direction of a desire and willingness to accent the existing conditions.

In other words, in the direction of industrial peace. Complete industrial peace, I suppose, never will exist, but the history of this country and other countries, the history of labor organization would tend to indicate that when the principle of organization has been accepted, and that the unions know or no longer feel that they must fight for the right to exist, that a period of cooperation tends to ensue.

That dissatisfaction becomes quite different from what they have had before.

MR. EMERSON: Do you have any further questions?

CHAIRMAN MADDEN: No.

MR. EMERSON: I have no further questions.

CHAIRMAN MADDEN: Thank you very much, Mr. Fitch.

(The witness was excused.)

CHAIRMAN MADDEN: We will resume on Monday morning, at ten o'clock.

(Whereupon, at five-thirty o'clock, the hearing adjourned, to convene again at 10:00 a. m., on April 6, 1936.)

end of Alderson

CERTIFICATE OF REPORTER

"This is to certify that the attached proceedings before the National Labor Relations Board, Fifth Region, in the matter of

Wheeling Steel Corporation	C-3
Jones & Laughlin Steel Corporation	C-57
Crucible Steel Company of America	C-67
(Jennings and Spaulding Works.)	II-R-4

Room 406, Denrike Building, National Labor Relations Board, Washington, D. C., Monday, April 6, and Tuesday, April 7, 1936.)

were had as therein appears, and that this is the original transcript thereof for the files of the Board.)

SILLS REPORTING SERVICE

By HAROLD B. ALDERSON,
Official Reporter.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Washington, D. C.

Alderson Wms

In the Matter of Wheeling Steel Corporation and N.R.A. Lodge No. 155, Goodwill Lodge, No. 157, Rod & Wire Lodge No. 158, Golden Rule Lodge, No. 161, and Service Lodge No. 163 of the Amalgamated Association of Iron, Steel and Tin Workers of North America	Case No. C-3
In the Matter of Jones & Laughlin Steel Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Local 200	Case No. C-57
In the Matter of Crucible Steel Company of America, Spaulding and Jennings Works and Strip Steel and Wire Workers Union, Local No. 20084, A. F. of L.	Case No. C-67 II-R-4

406 Denrike Building,
1010 Vermont Avenue, N. W.,
Washington, D. C.,
Monday, April 6, 1936.

The above-entitled matters came on for hearing, pursuant to adjournment, at 10:00 o'clock a. m.

BEFORE:

J. WARREN MADDEN, Chairman;
JOHN M. CARMODY, and
EDWIN S. SMITH, Members of the Board.

APPEARANCES:

ROBERT P. WATTS
THOMAS I. EMERSON
A. L. WIRIN

Appearing for the National Labor Relations Board.

EDMUND M. TOLAND
Attorney for the General Council and Departmental Councils of Wheeling Steel Corporation.

P R O C E E D I N G S

CHAIRMAN MADDEN: Let us proceed.

Whereupon

JOHN A. LAPP

was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WIRIN:

Q Your name is John A. Lapp?

A Yes, sir.

Q And you are now resident in Washington, D. C.?

A Washington, with legal residence in Chicago.

Q Were you at some time a member of the Petroleum Labor Policy Board?

A I was a member of the Petroleum Labor Policy Board from October 1, 1934, until the 1st of April, 1936.

Q Did that Board consist of so-called "Impartial Persons" or was it a bi-partisan board?

A It consisted of three members, impartial members.

Q Who were the other two?

A In the period when I was on the Board, Dr. George W. Stocking was Chairman, and James Mullenbach was the third member until his death in April of 1935, after which there were only two members serving.

Q Prior to your appointment and assuming the duties of a member of the Petroleum Labor Policy Board, were you a member of any other governmental agency dealing with labor relations?

A For almost a year I was Chairman of the Bituminous Labor Board, Division II, consisting of Indiana, Illinois, and Iowa, and as Chairman of that Board, I was a member of the National Bituminous Coal Labor Board.

Q Now state what experience you had in dealing with labor relations prior to that appointment?

A For some weeks I was Secretary and Director of the Chicago Regional Labor Board, and I organized it and managed cases for some three months, I think, approximately.

MR. SMITH: That was under the old National Labor Board?

THE WITNESS: Yes.

BY MR. WIRIN:

Q What experience prior to that time?

A Prior to that time I had been a student of the

subject and an observer of labor cases and as early as 1920 I was a member of a special committee that investigated the street-car strike in Denver, Colorado, the one that caused so much bloodshed.

Q Were you connected at any time with the Social Action Department of the National Catholic Welfare Conference?

A For about seven years, 1920 to 1927.

Q And during that connection, were you interested in labor relations and problems?

A As a member and active promoter of the Catholic Conference on Industrial Problems, I was constantly in touch with the situation, and attended some fourteen of the regional conferences of that organization, and listened to the discussions of many experts in that period.

Q What was the purpose and nature of that organization?

A The purpose was trying to find means of harmonizing the relationships between employers and employees, by common understanding.

Q Have you been connected with the faculty of Marquette University?

A For approximately five years at Marquette University, from 1927 to 1932.

Q In what department?

A Head of the Department of Social Sciences.

Q Do you have a Doctor's degree from any university?

A I have an L. L. D. degree from Alfred University.

Q All told, how many years have been spent dealing with problems of labor relations?

A In one time or another, from the beginning of my activity when I became director of the Legislative Reference Bureau of Indiana, I have had contact with the problems, dealing first with the formation of legislation in various fields, and as early as 1915 I instituted

in Indiana a study of industrial arbitration, and that study, which was developed for the Bureau of Legislative Reference, became a book published by Carl H. Mote, the man who developed the study for me, and that book was one of the first complete reviews of arbitration, labor disputes, in this country.

Q Have you published any books in the field of labor relations?

A Not specifically, but my books have been largely general reviews of social problems, texts on economics, and texts on social sciences, and in civics, and parts covering, and in each book almost covering in general the field of labor relations.

Q Will you state briefly what the duties and functions of the Petroleum Labor Policy Board were?

A The Petroleum Labor Policy Board had entire jurisdiction of all labor problems arising under the Petroleum Code; instead of the questions going originally to the National Labor Board, the old National Labor Board, all labor problems came to the Petroleum Labor Policy Board, and throughout its career it handled all of the questions relating to collective bargaining and had jurisdiction and enforcement of the labor provisions of the Code.

Q Do you have with you the figures as to the number of cases that the Board handled?

A I have not the exact figures. I will have to find that here: On the complaint side, alleging violations of the wages and hours provisions of the Code, there were 3,945 complaints; 2,862 of these had been closed at the time of the Schecter decision, and 1,083 were pending.

Of the cases closed, 1,458 were adjusted and the operations of the respondent brought in compliance with the Code, and no violation was found in 922 cases, and in 482 cases the violations, compliance had not been secured.

That was on the labor provisions of the Code, and

the question of compliance under Section 7 of the Code, the complaints regarding discrimination against union men were received in 77 cases, involving charges of discrimination and coercion against union men or charges that company unions were being forced upon employees by employers.

The charges in seven of these cases were withdrawn, and in 22 of the cases the Board found no evidence of coercion or discrimination.

Settlement was obtained in 35 cases; 13 cases remained unadjusted at the time of the termination of the powers of the Board on the Schecter decision.

Total number of men involved in all of these charges of discrimination was 6,613; and in these cases the Board held twenty-three formal hearings, issued twenty-two formal decisions.

Q Did the Board find that any of the practices of employers which you have just now mentioned in the form of discrimination against employees for union activities and in coercion by the employers upon the employees—did the Board find that those practices led to unrest among workers?

A The Board, as a result of the cases, had to deal with twenty strikes, and with fifteen threatened strikes, during the period, and the statistics of the Board on these strikes indicated that—or perhaps I can read the formal report, a paragraph from the formal report:

"Strikes which were instituted principally because the employer or employers refused to bargain collectively, six. Strikes which were instituted principally because the employer or employers refused to meet union demands, although they did meet and bargain with the employee representatives, four. Strike which was instituted principally because the employer coerced and discriminated against union members, one. Strikes which were instituted principally because the employers failed to abide by a previously negotiated agreement, two. Strike which was instituted principal-

ly because the employers had started a practice of leasing stations, one."

The above figures would indicate that the predominant reason for strikes was the failure or refusal of employers to bargain collectively with the employees through chosen representatives, or discrimination on account of membership in the unions.

While statistics are not available for the threatened strikes, our analysis in general indicates that the predominant cause of the sixteen threatened strikes was approximately the same as the strikes themselves.

Q Now, Dr. Lapp, with respect to one of the cases now pending before the Board, and to which cases testimony is now being taken, namely, the Wheeling Steel Corporation, that proceeding arose initially, in the form of a petition by election for employees of the Wheeling Steel Corporation, and I will ask you whether or not the Petroleum Labor Policy Board conducted any elections of employees?

A The Board had a great many cases which involved the necessity of elections. The Board summarized its activities in that respect, and the summary was published in the Monthly Labor Review for October of 1935. Briefly stated, there were 62 cases in which the certification of the proper agency for collective bargaining was involved; 12 of these were determined without certification, that is, by agreement, and certification based on pay roll checks, sixteen. Elections, thirty-four.

That is, the Board conducted 34 actual elections. In addition to the 34, there were 18 separate elections conducted for the Board in Cleveland in the separate companies after the big filling station strike in 1934, so that the figures would show 18 in addition to those here, making some 52 elections that were actually held by or under the direction of the Board.

That involved 6,036 men in the 34 elections, and approximately 3,000 men in the elections held in Cleveland.

Q You stated that the summary which you are making reference to appeared in a monthly labor review. Is that an official publication of the United States Department of Labor?

A Yes, of the United States Department of Labor Statistics, of the United States Department of Labor.

MR. WIRIN: We will ask that the Board take judicial notice of the article referred to, which appeared in the Monthly Labor Review of October 1935.

BY MR. WIRIN:

Q Now, did any of the elections taken by the Board result in any disorder during the conduct of the election?

A We have no evidence whatever of anything but harmony in elections.

Q State whether or not the experience of the Board showed elections to be devices to allay industrial unrest, and if so, under what circumstances, and what are the facts?

A I would say from the experience of the Board that it was almost 100 per cent perfect as a means of allaying controversy on a particular point. The only exceptions to this statement is that in two or three instances, the companies failed thereafter to abide strictly by the results of the election, in that they attempted by various subterfuges to get around the necessity of dealing with the unions, and they did this as they thought, legally, and within their proper rights, but it did result in two or three instances in the failure to put into effect the results of the election.

However, as a matter of producing harmony, I think that there is no question about the almost perfect results obtained.

Q Is there any instance of a strike following an election conducted by the Board?

A I know of none in the Petroleum Industry.

Q In the Petroleum Industry, are there any collective agreements existing between workers as repre-

sent[illegible] by unions on the one hand, and employers on the other?

A There are many such agreements at the present time. Those are both locally and on a wider scale, regionally, and at least in one instance, a national agreement.

Q Could you let us have the names of some of the employers that have collective agreements in the Petroleum Industry, with workers?

A The Shell Petroleum Corporation has agreements in practically all of its refineries, covering practically all of its employees, East Chicago, Wood River, in Illinois; and Arkansas City, Arkansas; and Houston, Texas.

A full agreement covering all employees in California, including everything but the marketing end, is also in force in the Shell Petroleum Corporation, with a group of unions.

Then nationally the Sinclair Company has a complete agreement with the union throughout the country, and a separate national agreement with the metal trades department for the members that it represents throughout the country.

Q What has been the experience of your Board and of yourself as to whether or not these collective agreements that were entered into by representatives of the employees on the one hand, and with representatives of the employers on the other, whether these collective agreements prevent strikes?

A Most of these collective agreements are comparatively new, and there was, I believe, no agreement whatever in force in the Petroleum Industry when the Code was established.

I do not know of a single agreement anywhere, so that these agreements cover a period of approximately two or three years.

It would be hard to say definitely the results in statistical form, but the observation which I as a Board

Member had was that it had a great tendency to allay troubles, and it was a means of determination of issues that arose, and in the agreements that were adopted throughout the country in which the Petroleum Labor Policy Board was made the final arbitrator, or the mediator—I should explain that probably in twenty-five different contracts we were made the arbitrator or mediator—that scarcely in any case where we were called upon to decide an issue—three or four arbitrations were held in the Shell Petroleum Corporation at Wood River, Illinois, where we made a final decision, and throughout the other twenty-five contracts there were not half a dozen instances when the Board was called in.

In other words, the collective agreement worked so perfectly that there was no need for any final arbitration in the case.

Q Now, changing the subject to the experience of the Bituminous Coal Labor Board, will you please state how the Bituminous Labor Board was set up, and what were its duties and functions?

A The Bituminous Coal Labor Board, Division II, was one of six divisions, handling the labor problems of the Coal Industry throughout the country. Division II covered Indiana, Illinois, and Iowa, and each of these Boards is made up of an Impartial Chairman, a representative of the miners, and a representative of the operators.

The six chairmen, later reduced to five, constituted the National Bituminous Coal Labor Board, which was a Board of Appeal from any of the decisions of the regional boards.

Let me add there, that the Board had jurisdiction, rather complete jurisdiction, over the labor problems in the Coal Industry, and was expressly directed to hold elections whenever there was a dispute as to the proper representation.

Q Were these Divisional Boards bi-partisan

Boards, with a representative of the public as Chairman?

A Yes.

Q And were you the representative of the public on Division II?

A Yes, on Division II.

Q Did you have an experience with respect to the holding of an election at Merritt, Illinois?

A That was the only election that we held under the Bituminous Labor Board Division II, the reason being the collective bargaining existed quite universally throughout the area of Indiana, Illinois and Iowa.

We did hold an election in Mark, Illinois, in 1934.

Q Will you let us have the benefit of your experience in the course of that election?

A That election was injected into a very tense situation at the Mark mine. The mine had been a non-union mine all of the years, and in the fall of 1933, after the Coal Code was in operation, the operator decided to unionize the mine, and he entered into an agreement with the United Mine Workers of America.

Immediately, the Progressive Miners of America, which was an opposing faction in Illinois, struck the mine, and the situation became very tense.

So tense was it that the Governor was called upon to send troops there.

It happened that I was in Springfield, Illinois, at the time the strike broke, and I was in the office of the Governor, and he was exceedingly disturbed by the situation. He called on the long-distance to find out the tensity of it, and agreed with them that instead of sending troops he would ask the Bituminous Coal Labor Board to go in and make an investigation.

The Board went in the following week, and the mine had been down for more than a week, and a hearing was held. I have held many hearings, and I know of none that was quite as tense as that one. The feeling was running very high at that time, between the

Progressive Miners of America, and the United Mine Workers.

We held a hearing, as some said, almost in an armed camp. The hearing resulted in the conclusion that we could not determine which union had the right to represent the men in that particular mine, and that an election was the only way to determine that point.

We announced an election one week thereafter, and the Board went as a whole to hold the election. The election was conducted in the usual manner in which such elections are conducted, with a check of the pay rolls as of a certain date, and at the close of the day when the men were leaving the mines, they came to this voting place for the purpose of casting ballots.

They filed through, and practically every miner in the mine voted, and 465, I believe, cast their ballots; 245 of those voted for the Progressive Miners of America, and approximately 125 for the United Mine Workers of America, and thereupon, the Board declared that the Progressive Miners of America had carried the election, and were entitled to the contract in that mine. We ordered the operator who had entered into this contract just previously with the United Mine Workers to cancel his agreement with the United Mine Workers, and enter into a contract with the representatives of the majority of the men in that mine.

The operator was adverse to this, but he did it, and the United Mine Workers accepted it, and the mine opened immediately, and as far as the conflict was concerned thereafter, it was resolved completely.

Q Was the strike terminated upon the holding of the election, and the declaration of the result, and the new agreement with the Progressive miners?

A Immediately.

BY MR. CARMODY:

Q May I ask a question at this point? Isn't it true that one member of that Board represented the oper-

ators in general in that area, and one member was a member himself of the United Mine Workers?

A Yes, Mr. Carmody.

Q And you were the Impartial Member?

A Yes.

Q So this member of the United Mine Workers who was a member of the Board, acquiesced in certifying that the Progressive Miners who were fighting the United Mine Workers, be certified and be given the contract in that mine?

A Correct. The member of the United Mine Workers voted with us to make a unanimous decision to hold the election.

Q With the other two members of the Board?

A Yes; and voted to certify the Progresaive Miners of America as the accepted representation in that mine.

BY MR. WIRIN:

Q Now, Dr. Lapp, are there collective agreements between unions and operators in the Bituminous Coal Mining Industry?

A Throughout that region, I speak only for that region, Illinois, Indiana, and Iowa, almost complete unionization.

In Indiana, and Iowa, entirely with the United Mine Workers of America, and in Illinois, partly with the United Mine Workers, and partly with the Progressive Mine Workers of America; with very few exceptions, if any now, excepting some of these small dogholes, the entire area is unionized, and moreover practically all of it has been unionized or practically forty years, without any interruptions—no, strike that. There has not been a time when they have not been actually unionized, in approximately forty years.

Q Are the employers organized in any association dealing collectively with unions?

A In each State there is an operators' association, which deals collectively for the operators with the representatives of the miners, in making their bi-annual

agreements. In the State of Illinois, there is an additional operators' association which deals with the Progressive Miners, in the mines which they have jurisdiction of.

And then there is another organization of operators of so-called strip mines in Indiana, which deals with the members of the United Mine Workers who have been operating strip mines.

Q In other words, is it fair to say that both sides, that is, the workers on the one hand, and the employers on the other, are organized into an association for the purpose of collective bargaining?

A Almost completely in those three States.

Q And in dealing with each other in collective bargaining, each group is represented—or the workers are represented by the union on the one hand, and the employers by an employers' association on the other?

A Yes.

BY MR. CARMODY:

Q May I ask, is it true that these associations or any of them have selected men who are especially competent to deal with labor matters, to carry on negotiations with the union?

A Most of them have well-qualified men as employers' representatives in dealing with the union, and in Indiana they have the High Commissioner, I have forgotten the exact name, who is given the entire management of the thing.

In other associations they have chosen executive secretaries principally for their ability to handle this particular type of problem.

Q I am thinking of the Illinois association which took Joe Silk, one of the most competent operating managers in the whole area, and made him their Labor Commissioner.

Was he serving at the time you were there?

A He was not serving at the time that I was there, but Mr. Cartwright was serving in Indiana at the time that I was there.

BY MR. WIRIN:

Q Are these collective agreements in writing?

A Yes, and published, and widely distributed. Everybody has a copy of the agreement in his possession, almost; I think almost every miner has a copy.

Q Do these agreements provide that during the pendency of the agreement there shall be no strikes or stoppages?

A Yes. In these agreements, in all three states, there is provision that there should be no stoppage of work, that the disputes shall be settled by a system of arbitration, and in two of the States, Illinois and Indiana, there is an umpire who is the final authority on deciding disputes.

In the meantime the work goes on, and if any party violates the agreement he is fined a sufficient amount so that it rarely happens that anybody ever actually interferes with production. I do not know of any instance where there has been any material interruption of work due to disagreement over the terms of the contract.

They have chosen in both of those States, Indiana and Illinois, very competent men as umpires. John White, former president of the United Mine Workers, was for many years umpire in Indiana, and William B. Wilson, former Labor Secretary, was the umpire in Illinois for many years.

MR. CARMODY: You mean former Secretary of the United States Department of Labor?

THE WITNESS: Yes. May I add there, in that regard, that the experience of forty years has accumulated such a foundation of what you might call the common law of labor relations in that industry, that practically every question that could possibly arise is settled on the basis of the existing experience and existing law.

BY MR. WIRIN:

Q And settled without strikes and lockouts?

A Yes.

Q And without any interruption to the mining of coal?

A There is practically no interruption of mining of coal during the period or the term of the contract.

BY MR. SMITH:

Q How is that common law recorded, Dr. Lapp, in the decisions of the arbitrators?

A It isn't collected, but it exists in any locality, it is in the offices and agreements and decisions of the arbitrators and umpires, and it would be in the possession of the offices of the mine workers, and also of the operators, but there is a great mass of the local union decisions that are not recorded.

When I was in that area, it was my design to institute a collection of everything that had been decided, but we didn't get to that, and it would have made a magnificent production of what again I repeat, might be called the common law of the industry in those States.

BY MR. CARMODY:

Q I think one of the significant things you said is that much of it finds its way into the agreements as they are revised year by year, and is that true?

A That is true. As these umpires' decisions become the settled law, they are incorporated into the contract, and moreover, if a contract is adopted thereafter, would specifically negativing this decision of the umpire, it is accepted as a part of the general agreement.

BY MR. WIRIN:

Q Common law lawyers frequently consider tradition as an element in the common law. Would you say that with respect to the common law there has been developed in labor relations in the Coal Industry, there has been developed the tradition that disputes must be settled by arbitration, and not by strikes, while the agreement obtains?

A It is fixed pretty firmly in the mind of even the most humble of workers. I was very much pleased to see the acceptance when it was in a contract, of even things that went down pretty hard. They said, "Well, we agreed to do that, and we will do it." The contracts were sacred in that region.

That is among the men; and of course among the unions, and among the employers.

Q Now, prior to these collective agreements, were there strikes in the Bituminous Coal Industry?

A I could not testify on the history back of forty years ago. It had the same general experience as the rest of the country. I have no facts on the actual situation, it is so far back that the industry was in somewhat of a chaotic condition anyway, as far as labor relations were concerned prior to the formation of the unions in the late 90's.

Q Prior to the recognition of these unions, were there strikes caused by the refusal by employers to recognize and deal with and bargain collectively with these unions?

A I couldn't answer to that.

BY MR. CARMODY:

Q If you were to ask him that question about other areas, during the more recent years, he might know. I don't know whether Dr. Lapp is familiar with what has happened in West Virginia, for instance, and western Pennsylvania, on occasions, and in Kentucky, and Alabama, and we have Colorado from another source.

A I am familiar in general only with what I have heard in various hearings, and various proceedings, and what I have read. It is a matter of common knowledge to me that there have been strikes, very widespread strikes, where no agreements are in effect.

Q Those went on at the very time that there were no interruptions to mining coal in Illinois, and in Indiana, to which you referred recently?

A There were no interruptions of mining in those States with the exception of those interruptions that occur when the contracts expire, and they have a period of determination of what the new contract is going to be, in which case some strikes have occurred.

BY MR. SMITH:

Q Those contracts, may I ask, run ordinarily for a considerable period of years?

A For a period of two years.

Yes, and they are almost always opened at the end of two years for adjustment. In the violent fluctuations of the last ten years, that has been a matter of some difficulty to adjust every two years and there have been interruptions of production at times during that period.

But the result always was in a new agreement of a similar character.

BY MR. WIRIN:

Q Now, Dr. Lapp, in terms of your general experience, and exclusive for the moment of your experience with the Petroleum Industry and Bituminous Coal Industry, have you found that discrimination by employers against workers for their union activities has been a cause of unrest and strikes?

A Both from my experience in these Boards, and my general experience and observation outside, I would give that as being a conclusion.

Q What is your opinion as to whether or not the refusal by employers to meet with employees, and to bargain collectively with their representatives, as to whether or not that has been a cause of industrial unrest and strikes?

A Particularly so in my own observation in the Petroleum Industry. That has been one of the major causes, and also in my general observation of strikes outside, and hearings upon strikes of labor problems, and that conclusion would be correct.

Q What about the financing and the sponsoring

and the domination by employers of unions? Has that been a cause of unrest among workers?

A It has been through the indirect result in refusal to bargain with the chosen representatives. The advancement of company unions through the support of companies has resulted in discrimination against the regular unions, and has almost invariably been one of the causes of unrest.

It is true that that support may have gone on in some instances for some time, without unrest having been caused, but the unrest comes when the union men, or when men desired to be represented by a union, and find that a company supported union is blocking the way, and that that union does not represent the majority of the men.

Q Now, what advantages, in your opinion, have come to employees as a result of the practice of collective bargaining, if any?

A The main advantages are that they approach their employers on more nearly equal terms than they possibly could have approached them any other way. You take the Oil Industry as an example, a large portion of the oil executives lived in New York City, and elsewhere in the financial centers of the country, and a small group of men down in Texas would have a pretty difficult time trying to impress absentee owners; not only that, but if they did impress them they could not necessarily secure any agreements on equal terms.

Even small unions are handicapped in that respect, and it is only when the unions are organized on a large enough scale so that they can sit at the council table and in comparative equality with the employers, that the employees have a chance to bargain successfully.

Q Would you say that collective bargaining by and large has brought higher wages and better working conditions, and less working hours, to those workers that have been represented by unions, engaging in collective bargaining?

A Decidedly, in general, and especially so in the Petroleum Industry. While some branches of the Petroleum Industry always paid fairly good wages, even before collective bargaining was introduced, some other branches of the Industry were deplorably low in their wages. The one branch of the Industry where that has been proven beyond question is in the marketing end of the Petroleum business, where wages were deplorably low, and where, in the case of the real organization of the unions, there has been a lifting up of the wage scale to a point where at least it approaches a fair wage.

Cleveland was one of the best examples, where previously wages had been on the average less than $90.00 a month, in the filling stations of the major companies, for the top men, and the wages under collective agreements steadily are advanced to a point where at the moment they are $112.00, and this year they continued collective agreements, and they will no doubt lift that a little higher, making approximately a million dollars increase in the wages of the employees, in the filling stations of Cleveland alone, lifting it from this wage which was a sweated wage, up not to what we call a living wage, because $112.00 would not be even that, but it is a tremendous advance over that.

As for working conditions in all branches of the Industry, my observation and experience would lead me to conclude that unions have decidedly advanced and bettered working conditions.

BY MR. SMITH:

Q In your answer to that previous question, you spoke of the impossibility of a small group of workers impressing the concern somewhere in New York.

Does that mean that in the instance where agreements were negotiated between oil companies and organized labor, that there was an actual contact in New York between the heads of the company, and the heads of the union?

A I meant to conclude from that that the organization of the unions on a national scale, as for example in the International Association of Oil Field, Gas Well and Refinery Workers, representing the workers all over the country, with headquarters here in Washington, did have a contact with the important men in the Industry. The contact through the Metal Trades Division of the A. F. of L., gave the men in Texas a bargaining instrument which they locally couldn't have.

BY MR. WIRIN:

Q But these persons located in New York, were in your experience actually contacted before the collective agreement was finally entered into?

A As a rule, the National Headquarters of the companies had the final word in the matter. That is, as far as the companies were concerned. Very frequently the local men could not, or pretty generally the local men do not act without long distance calls to New York.

Q Now, Dr. Lapp, is it fair to say that the purpose of collective bargaining is the arrival into a collective agreement, preferably a written collective agreement, to govern terms of employment for a certain period?

A The great object is in regularizing the relationships, so that men know what is what, and what to expect for a period of time, and on the basis of that experience to determine what better things can be worked out.

BY MR. SMITH:

Q When you say "men know what to expect" you mean men on both sides?

A Yes.

BY MR. WIRIN:

Q In those cases where collective bargaining has resulted in a collective agreement such as you have described, what advantages does the employer derive from the practice of collective bargaining in those instances?

A The employer is freed from the risk of contro-

versy during the period for which those contracts are signed, and he knows exactly what to expect, and the wages and working conditions, and he has contact with the leaders of the men and he is able to work out harmoniously many things which otherwise he couldn't work out.

I am of the opinion that the advantages are equally to the companies, as well as the employees.

Q What is your experience as to whether or not employers who have collective agreements with responsible unions, feel assurance or confidence that the unions will comply with the terms of the agreement or the decisions of the arbitrators?

A In the Coal Industry, of course, that is universal, and nobody questions it, because of the experience of some years in settling such things.

In the Petroleum Industry, the experience of the two and a half years or so would lead anybody to conclude that they can expect compliance with the agreements.

I have known of two or three instances where men went back on their agreements and struck, but out of all of the hundreds of instances of a similar character, have have come to my attention, those were the only ones, and they were, as a rule, in those cases, beaten. The employer has come to recognize that even the unions won't stand for a breaking of any agreement that is entered into, and they understand, too, that the public won't stand it, and the unions know that the public won't stand it, and it has come to be a recognition on the part of the union men that I know, that it is better policy to abide strictly by the agreements even when those agreements are not all that they like.

BY MR. SMITH:

Q Is it also your experience that the employers keep their agreements?

A Yes; Yes, I would say, without any question.

BY MR. WIRIN:

Q When the agreement is arrived at by represen-

tatives of both parties, after a full discussion in advance, with a complete understanding of the terms of the agreement, the agreement is kept by both parties?

A I know of no instances, except where there is a disagreement over the meaning or terms, where employers have failed to abide, and I know of no more than two instances where the employees have failed to abide.

Q Now, Dr. Lapp, what has the general public gained as a result of these practices of collective bargaining that you described?

A The very fact that these collective bargaining agreements make sure that we have an uninterrupted flow of commerce is the answer.

Namely, the public can be assured that for two years, in the case of the Coal Industry, of the Middle West, there is going to be peace and harmony and no interruption of trade in coal. They know in the case of the other industry, every other industry that affects them directly, there is going to be no interruption, and that they can determine their business for a year or two years on the basis of there being no interruption of the trade in which they are engaged.

I think that is the greatest advantage that comes to the public. The prevention of strikes naturally is a great benefit to the public, since the public must suffer directly in every case of a strike.

Q Now, Dr. Lapp, are you familiar in a general way with the provisions of the National Labor Relations Act?

A Yes, fairly familiar.

Q What is your opinion as to whether or not the findings in the National Labor Relations Act, particularly Section 1, are true, in so far as they purport to be findings of fact concerning the relations between employers and employees?

A Let me have that question read.

(The question was repeated by the Reporter.)

A I see what you mean. These findings of fact, as expressed in Section 1 of the Wagner Act, will give the basis for the determination of the questions indicated here, namely, whether or not the experience proves that protection by law of the right of employees to bargain and organize collectively, safeguards commerce from injury, impairment, or interruption, and promote the flow of commerce.

CHAIRMAN MADDEN: The point I think is this: The Congress has recited those things as being facts, historical and economic facts. I think Mr. Wirin wants to know whether you agree with the Congress.

THE WITNESS: Briefly, I would say yes. After an analysis of that on several occasions, I would state that the statement of Congress is in my judgment a correct statement of the situation.

BY MR. WIRIN:

Q Please state whether or not, in your opinion, there is concensus of opinion among students of labor relations as to the correctness of these findings by Congress?

A I have never talked with anybody who had had experience in the field, who held otherwise than that their findings are in general in conformity with the actual conditions that we have in the country today.

Q With particular reference to that section which you referred to, namely, "experience has proved that protection by law of the right of employees" and so forth—without reading all of it—please state what your experience has been as to whether or not experience demonstrates what Congress says it does?

A In the Coal Industry I have already indicated that throughout the period of these contracts there are no interruptions, and therefore the industry is promoted and commerce is promoted, and in the Petroleum Industry likewise I would give the same answer.

In other fields in which I have become intimately connected, I would give a similar answer.

Q I call your attention to Section 8 of the National Labor Relations Act, which describes certain practices by employers, and declares such practices to be unfair labor practices. I will ask you whether or not in your experience such practices by employers have affected commerce.

A These practices in the industries in which I have worked and been familiar, decidedly do affect commerce; in my previous testimony upon the Oil Industry, as well as the Coal Industry, would bear that out.

Q Do you have a short statement of analysis of the National Labor Relations Act that you have made, or rather, of the problems involved in the Act?

A I have prepared briefly a statement about obstructions to commerce, and I would like to say that my experience indicates that strikes are a direct obstruction of commerce, and not an indirect obstruction.

Commerce stops when a strike occurs, or commerce is very heavily burdened when a strike occurs, and therefore the causes that bring on strikes are the direct causes of a direct effect upon commerce.

In this connection, I would add that physical obstructions to commerce are as plain as direct effects. If you obstruct a river, you obstruct commerce, ever so little, but it is an obstruction to commerce.

If you conspire to control the products, and prices in commerce, you obstruct commerce, and you directly burden commerce; and if you pass State Laws which interfere with commerce, such as taxation laws, as the one ruled upon the other day, you obstruct commerce, and in this case you obstruct interstate commerce, in that particular case.

You obstruct commerce also by unfair trade practices, which impose burdens in one way or another, but most of all you more directly obstruct commerce when through strikes, you stop the flow of commerce, in part or in whole and finally, in the case of unfair labor practices, which actually result in disharmony, which results in strikes, you directly affect commerce.

BY MR. SMITH:

Q When you say "unfair labor practices" you mean as defined in the Act?

A As defined in the Wagner Act.

BY MR. WIRIN:

Q And you say that as a result of your experience on the Governmental agencies, and your general experience in the field of labor relations?

A In those relationships, and in all of the strikes in which I have been a party, and in all of the hearings in which I have taken part, and in some extensive studies which I have made in that field.

MR. WIRIN: That concludes the questions I had in mind, and if there are no questions from the Board, thank you very much, Doctor.

To save the Board the burden of taking judicial notice of the Labor Review Article, I offer it in evidence. It is very short.

CHAIRMAN MADDEN: It is admitted as a Board exhibit.

(The article so referred to was received in evidence and marked as Board Exhibit No. 45, Wheeling Steel Corporation; Board Exhibit No. 88, Jones & Laughlin Steel Corporation; and Board Exhibit No. 33, Crucible Steel Company of America.)

THE WITNESS: If the Board wishes to have a summary of the strikes in the Petroleum Industry, I have that also.

MR. WIRIN: I think you have covered that pretty thoroughly.

THE WITNESS: The chart of the separate strikes is given here, if that would be of any service.

CHAIRMAN MADDEN: We will recess for five minutes.

(WITNESS EXCUSED.)

Whereupon

OTTO S. BEYER

was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WIRIN:

Q Your full name is Otto S. Beyer?

A Yes, sir.

Q You live in Washington?

A No, in Virginia.

Q And are you a member of the National Mediation Board?

A Yes.

Q How long have you been a member of that Board?

A Since the 15th of March.

Q And by whom were you appointed to that position?

A By the President.

Q Prior to your becoming a member of this Board, were you, or did you hold a public office of some kind?

A Yes.

Q What was that?

A Director of Section of Labor Relations of the Federal Coordinator of Transportation.

Q And how long did you have that position?

A Since June of 1933.

Q Have you concerned yourself therefore with labor relations in the railway industry during the last few years?

A Yes.

Q And have you had particular experience in the field of what is now known as union management cooperation?

A I have. I have had considerable experience in that particular field of labor relations.

Q Will you tell us in a general way what that experience has been? I was referring to the union management cooperation.

A I understand. The experience goes back as far as 1918, when in the Federal—or United States Army Arsenals, we tried out an arrangement of having the labor organizations in those particular arsenals, take part in furthering the programs of the arsenal, by way of improving production, helping to utilize the services and products of the arsenals by various departments of the Government, increasing the efficiency and the quality of the workmanship of the products of these institutions, and in general being helpful in accomplishing the purposes for which those particular manufacturing plants were established.

Q What was your connection with the arsenal?

A At that time I was in the service of the United States War Department, first as a captain, and subsequently as a Director of the Bureau which sought to bring about a greater utilization of these arsenals, and the manufacturing facilities of the arsenals by all Departments of the Government.

Q Have you written any articles on the subject of union management cooperation?

A I have written extensively on the subject.

Q Now, what is the meaning of the phrase "Union Management Cooperation?

A The meaning of the phrase is this: "Cooperation between labor as represented by its freely chosen organizations and spokesmen, with the managements of the concerns that are willing to recognize and accept such cooperation to the end that the purposes for which these institutions in which the employees represented by these labor organizations and spokesmen work, to the end that the purposes for which these institutions exist may be more acceptable, and may

improve their sales, their output, and may improve the conditions of employment, and increase the compensation, stabilize the employment, and in general discharge the responsibilities for which they were established to the public more satisfactorily than they would otherwise.

Q In what industries in the United States has union-management cooperation been tried?

A In its broad sense, practically every industry that has established organized relationships with employees, may be said to recognize and have applied the thoughts and ideas that underly this arrangement between labor and management.

Q Have there been any particular industries in which a definite plan has been used?

A In some, the relationship has perhaps been developed to a higher degree of perfection than others. In some, as it might be said, definite plans have been adopted.

Q Will you let us have the industries in which this plan has been adopted?

A Perhaps the most well-known is the railroad industry. In the coal industry we also have a definite example of such labor-management cooperation, and in the machine-building industry we have examples of it, and we have examples of it in the textile industry.

MR. SMITH: In what branch of the textile industry?

THE WITNESS: Cotton sheeting.

BY MR. WIRIN:

Q Perhaps you had better explain now in what way union-management, or cooperation with management in the textile industry has been applied, and in what method it has been applied.

A I might also add to that, in the garment industry, both the women's and men's garment industries, we have examples of it.

Do you want me to explain how it happened in the textile industry?

Q Has it been tried in any industries in Canada?

A On the railroads in Canada.

Q Do you have any estimate as to the number of workers in the United States that are engaged in one form or another in this plan?

A Well, it depends upon how broadly you construe the plan. If you want to confine it more or less to a definite understanding which has been established on a basis of written agreements, I think that is perhaps the better thing to do—I would say that there are approximately 150,000 employees in one form or another who are in that.

Q United States and Canada?

A Yes.

Q Where did the plan originate in the United States, in the terms of a definite and real and practical plan?

A In the Baltimore and Ohio Railroad.

Q Did you have a participation in that?

A Yes.

Q What was the nature of your interest and activity?

A My participation in the arrangement came about from the fact that I was retained as technical adviser and engineer by a group of labor organizations, to the end that an arrangement, labor cooperative arrangement, be brought into being the management of the Baltimore and Ohio Railroad Company and those particular organizations of their employees, of its employees.

Q Referring now to Baltimore and Ohio, to that plan, did it originate by the employer or by the union?

A Well, it is difficult to say that it originated any place. It is sort of an outgrowth, or a natural development which, as you go back over the history of it, you detect contributions from various sources, broadly speaking, the major contributions came from the employees themselves.

I might make this general observation, as one goes back over the statements and hopes and wishes that have been expressed from time to time by responsible leaders of organized labor, especially let us say, the American Federation of Labor, Mr. Gompers, and various committees that have functioned as part and parcel of different labor groups, including the American Federation of Labor, you will see a continual reiteration of the fact that they are perfectly willing to participate and to assist in furthering the purposes of the industry by way of improving efficiency, by way of increasing and improving service, and quality of workmanship, and by way of education and training of personnel, and by way of safety and fire prevention and all of those things.

So basically, I think that it would be proper to say that to the labor movement belongs the credit for having focused attention upon the opportunity for constructive work as far as labor organizations are concerned in the conduct of the industry.

Q What I would like to know more particularly is whether or not in the installation of the Baltimore and Ohio plant, the unions were the moving parties?

A They were the proponents of the arrangements, because it was through them that I in turn was given the opportunity to step into a given situation, and apply the thoughts that they had in mind.

Q And is it true, then, that the union having initiated or having been the moving parties, finally got the Baltimore and Ohio management to accept the plan and experiment with it?

A The Baltimore and Ohio president said that if that was the attitude of the labor organizations, he would be perfectly willing to give them an opportunity to demonstrate what they could do along those lines, and then it became my particular responsibility to go to a certain shop on the Baltimore and Ohio and try these ideas out, and try to get them into actual practice.

Q To what shop did you go, and in what year?

A It was located at Pittsburgh, a large car and locomotive repair shop, employing about 1,000 men, and that was in the year 1923.

Q What did you find the conditions at the plant to be, with respect to efficiency and morale?

A Well, more or less the conventional picture, which one finds, where there is a misunderstanding as to the true place that organizations of labor and the spokesmen of labor might possibly—or the true functions of the organization of labor and the spokesmen of labor might discharge in the conduct of an enterprise such as that.

I might say that immediately prior to my advent to the Pittsburgh district, there were certain labor difficulties that had arisen, which had culminated in a strike, and it was subsequent to that strike that I came into the picture.

The strike primarily centered around many of the difficulties with which industry is confronted today by virtue of a misunderstanding, or an unwillingness, rather, to have or grant men that type of freedom of association that, for example, the National Industrial Disputes Act, contemplates.

The strike turned largely around what in the estimation of the men were unfair labor practices. However, the strike was settled, and in that particular atmosphere, it was, that I came into the plant.

I say that, because that only made the task all the more difficult to bring about and sell this idea of cooperation between the men and the management. The fact remained, however, that despite that handicap, the processes of education and such things as we went to, demonstrated the virtue of the ideas and the willingness on the part of the men and the management to really work together for a common purpose.

Q When you said the National Labor Disputes Act, you are referring to the Wagner Act, which is known as the National Labor Relations Act?

A Yes, that is what I should have said.

Q Now, just describe how the plan worked at the Baltimore & Ohio plant in Pittsburgh, and describe the machinery of its working in the plant.

A Why, perhaps I should preface what I am to say on that score by indicating the ideas more concretely, which underlie this plan as applied to that particular shop.

Here was a railroad shop which had been run more or less in the conventional way, where labor organizations and the spokesmen of the men, grievance committees, their activities were simply confined to the policing of the written agreements, and the rules and regulations which had been established as between men and management in that particular plant.

The attitude which prevailed up to that time, and which prevails to a large extent today, with respect to labor organization, was that a labor organization, even where you have agreements, of necessity tended to interfere with the smooth functioning of the plant.

Now, we tried to shift the emphasis in the Pittsburgh situation from regarding the representatives of the men, these people who came and protested when something went wrong, we tried to have the management recognize that it was exceedingly desirable to dispose of these conventional petty difficulties that arise from time to time, promptly and efficiently.

We said that in so far as the management does that and will accept these men as the spokesmen for the rank and file, and will make a conscientious effort to clear up difficulties, the men in turn will be glad to respond by way of indicating to the management what it is that may be corrected or improved in the conduct of the plant itself.

If, for example, a group of men or a labor organization is simply regarded as a sort of liability rather than an asset around the plant, the tendency is of

course for the management to resent any suggestions as to how things may be improved or even to resent a protest on the part of the rank and file, or a spokesman on the part of the rank and file, as to things which are not as they should be, with respect to some difference of opinion or grievance or a violation of rules.

Q Do you mean by that, that the attitude of the employer and average circumstances, is that that is a matter solely for the employer, and it is none of the worker's business as to the method of managing the plant?

A Broadly speaking, that, of course, is the attitude but in the railroad industry more particularly a concession has been made with respect to according to the rank and file the right to committeemen, shop committeemen, as they are usually called, or shop stewards, to approach a supervisor and ask that certain conditions be corrected.

However, as long as the emphasis is more or less, or as long as it is considered that that is more or less an interference with management, if you had indicated it isn't welcome—the task we had in Pittsburgh was to get the management to realize that that was a very desirable thing to have accomplished; and it was exceedingly desirable from the point of view of the morale of the plant and for larger purposes later on, to make their peace with that particular arrangement, and then having done so, it was indicated that the men would then turn around and by means of those same spokesmen encourage the rank and file to improve the kind of work that they were actually doing, and would encourage the rank and file to take extra precautions by way of safety, by way of material conservation, and by way of light and heat conservation, and elimination of waste in general.

Now, the management, I want to say this, when they were shown that such might be the results, were perfectly willing, and went out of their way to work

with the rank and file, and with the spokesmen to clean up these petty misunderstandings, whatever they might have done, and having done so, the next step was to bring the rank and file, or the spokesmen for the rank and file, to bring them together, to determine what it was that they could do jointly to improve the performance of the plant in which they both worked.

So that was done.

Q With their joint conferences?

A Yes; and the next thing that developed was the arrangement of these joint conferences, and from these joint conferences the men went back to their different so-called "local lodges" and solicited from the rank and file, who met there evenings, ideas as to what could be done to make this machine work better or to save some unnecessary labor, hardships, or to save some material, or to improve the kind of work that the man was doing.

That was with the result that it was amazing how many such ideas were lying around loose that were being lost simply because the attention of the men, because the energies of the men and the interests of the men, were not being aroused to contribute, and to make that contribution to the performance of the plant.

Q Do you have any figures handy as to the number of suggestions that were made, and how many of them were for the benefit of the workers, and how many for the employers, and how many of joint benefit?

A The figures to date in the entire situation with which I am familiar are very large. This was on the Baltimore and Ohio, and I might state that this whole program subsequently was adopted over the entire system, and found its way into all of the shops, and from the Baltimore and Ohio it went to other railroads, but up to that time, and that was, I think, in 1928, approximately 22,000 proposals of one kind or another were forthcoming from the rank and file, by

means of this avenue, and of those, approximately 85 per cent had been put into actual practice.

Now, mind you, there is a very great distinction between these matters and the conventional minor things that come up between men and management, even where organized relationship exists, and usually they are referred to as grievances. These are not grievance matters, but these have to do with the purpose for which the plant exists, the turning out of the repairing of locomotives and the building of cars, and the manufacture of material, and on the whole, I would say that in the course of a year our experience has been that about for every man employed, there is forthcoming one practical proposal, one contribution affecting the welfare of the institution as a whole, so that if you would ask me about how many of these things have been forthcoming in the entire situation, with which I am reasonably familiar, I would say that they run into about, to date, on all of the railroads that I know anything about, probably up to 100,000 or more.

Q Did any of these proposals that were adopted result in mutual benefit to the employer and employee?

A That is largely the benefit, but initially, the original benefit was derived by the employer, and the employees would then share from the proceeds that would flow from these suggestions, and I might say that while I have been talking primarily about how this relationship works between men and management on the ground, the arrangement also contemplates and has actually worked out that way, as it is now in effect, and also contemplates that the spokesmen for the men at large, for example, on a railroad system, the spokesmen for all of the machinists and all of the locomotive engineers or all of the track employees, get together periodically with the management, and review not only these minor things that develop or are proposed from time to time at the shop, but also dis-

cuss matters of major importance, such as, for example, the regularization of employment, and improvement of working conditions in general, and the education and training of the employees, and the recruiting of new employees, and the application—more effective enforcement, should I say, of Federal laws, and all of those are matters that have been subject to far-reaching consideration between the representatives of the men and the management.

I say Federal laws because in the railroad industry we have a set of several laws, such as the locomotive inspection act, and the safety appliance act, and these place a far-reaching responsibility upon the carriers and their employees to see to it that they are lived up to, and the Government has a certain number of inspectors that police the situation, but the great task of seeing to it that those laws are lived up to falls upon the rank and file.

Now, the same way with the safety situation on the railroads. I would say that perhaps one reason for the exceptional safety performance on the part of the railroads in recent years has been the cooperative attitude on the part of the employees, stimulated through their organizations of labor, in bringing that about.

Q In the conferences that you have mentioned between management and labor in general, on the railroads, do national or international officers of unions participate in those conferences, as representatives of the workers?

A Yes, because they are the freely chosen representatives, and they are the people that do this speaking for the rank and file, and they are the paid officers, and incidentally absolutely independent; in that regard, it is very, very essential to the success of an enterprise of this kind, because if these people are in the pay of the company, they are not nearly as free to advance ideas which in some cases may reflect upon the local management.

Q Now, Mr. Beyer—

BY MR. SMITH:

Q I wish Mr. Beyer would expand on that last point just a little bit more. You mean, for instance, thinking in terms now of a single factory or plant, that if a worker comes forward with a suggestion for improving efficiency of that plant, it may be met with by opposition, because his immediate superior resents the idea?

A Most decidedly yes; and I might observe in that general connection that you usually find, therefore, in plants where the men are not free, or are fearful of the consequences, but the management never the less anxious to solicit and secure the ideas that the rank and file may have, they will have suggestion systems, but the whole thing is on a secret basis, and they will have boxes posted around the shop, and people will drop things in there, and where the idea comes from nobody knows, but under an arrangement such as I have been describing, the whole thing is in the open, and back of it all is the fact that people whom the management or some resentful supervisor could not, or it is so safeguarded that a supervisor who might be resentful of some suggestion can not get back at the individual and penalize him.

That crops up right straight along, and it is one of the things that we have to deal with here, and we have had to deal with. It is rather interesting that you should touch upon it, but it is also interesting to see that by reason of this degree of independence, resulting from organization of employees, and the capitalizing of the desire on the part of the employees to be really helpful when they have got no grievances to worry about, the reaction is that there are so many things that are forthcoming from the rank and file.

CHAIRMAN MADDEN: What are the unions which were involved in the B & O situation that you have described?

THE WITNESS: They are essentially the shop craft organizations, the ones that started off. They are the International Association of Machinists, and I am not certain that I know all of the names correctly. I can give you these—the International Association of Machinists, and the International Brotherhood of Boilermakers, and the Electrical Workers, and the Brotherhood of Railway Carmen of America, and the Blacksmiths and Helpers and Sheet Metal Workers.

CHAIRMAN MADDEN: All of them are standard unions.

THE WITNESS: Yes; they are the types of unions that you find, for example, seeking recognition, and organizing employees in the steel industry, and in the building industry, and in fact all industry.

Then in addition to that we also have the Brotherhood of Maintenance of Way Employees, and that is an A. F. of L. union.

We also had the United Mine Workers, for example, in the case of the Rocky Mountain Fuel Company, taking a similar attitude, and as I said a little while ago, several of the garment workers' unions have pursued a policy which is analogous to the one which I am describing, where they have been given an opportunity to function.

BY MR. WIRIN:

Q I was going to follow Mr. Smith's thought one step further. The contention is frequently made and heard that workers and labor unions object to an increase in efficiency, or to devices which tend to increase efficiency, on the ground that it will mean unemployment for some workers, and that in any event there is a general problem in American industry of opposition by organized labor to improvements in efficiency.

Now, what has been the experience with the plan that you have been describing, so far as regularization of employment, and what has been the attitude of the workers, with respect to problems of increased efficiency?

A Workers have no objection to increased efficiency, just so long as they are not the ones to be penalized. The whole idea that underlies collective agreements is that these things which otherwise lead to misunderstandings be adjusted and regulated. The question of wages, and the question of hours, and instead of being left simply in the hands of some one arbitrarily to do with as they see fit,

What labor wants is that those things be established by mutual agreement, likewise economy, and increased productivity. Labor has no objection to that, and they are perfectly willing to further those ideals.

But all that it asks is that there be an understanding as to how it shall proceed, and that labor for its cooperation shall benefit in the proceeds that result therefrom. Consequently, in connection with thise whole program, it developed very early that one thing that had to be taken seriously, in connection with this whole program, it developed that one of the serious things was stabilization or regularization of employment. It was not reasonable to expect men and women to take any interest in furthering efficiency, for example, if tomorrow somebody was going to be laid off. But it so happened, as the situation was canvassed, that there was a great deal of opportunity, if the management was willing, to really and truly do something about regularizing employment, in other words, stabilization of employment and safeguarding labor against the hazards that result from unregulated improvements in industry, and enlisted and brought labor in line, and indicated labor's willingness to really be helpful in the process.

Q And did this so-called hostile attitude of labor to improved methods become converted to a welcoming by labor of more efficient methods of production?

A Yes, as a matter of fact it was very interesting to me because in my contact with the situation on the ground, I was struck by the interest and the pride

that individual men themselves took in concrete propositions that had been the result of their suggestions, and the pride that they manifested, for example, in the reduction of defective cars and locomotives, and in the conversion of materials, and in that connection, all of those matters, and this whole program is utilized to acquaint the rank and file with the economics of the shop, that is, with the costs, and other items which are usually confined or are supposed to be of interest only to the management.

The minute that that was done, the men took a much greater interest in the purposes for which the institution existed.

Q You stated that the plan as originally tried at the Pittsburgh shops of the Baltimore and Ohio Railroad, spread to the entire Baltimore and Ohio system?

A Yes, and is now spread—

Q And is now being used in other railroad systems?

A Yes. The Baltimore and Ohio, and it was adopted on the Chicago and Northwestern, and Chicago, Milwaukee, St. Paul and Pacific, and the Canadian National.

Q When was it adopted on the Canadian National?

A Along about 1924 and 1925.

Q And were you asked to participate?

A Both the management and the men asked me to come up and I laid the foundation for that development.

Q Has it worked substantially in the same way in the various places?

A Yes, it is more successful on some roads than on others, because obviously, where there was wholehearted interest, and enthusiasm for it, why the plan developed perhaps to a high degree of perfection and brought forth better results than others, but that is natural.

Q Will you please state in a summary way as to what advantages the employees have derived from union-management cooperation?

A The advantages from the employees' point of view—

Q And then I will ask you, so that you can keep in mind in answering the question I have just asked, what advantages the employer, as such, derived, and what advantage the public derived?

A Then I have occasion to summarize the mutual advantages that have been derived—

Q I am going to offer into evidence, after a bit, your speech which will summarize that, but you can summarize that summary briefly for the Board.

A Shall I go ahead and summarize these mutual advantages?

Q Yes; or if you could do it more briefly by just stating that.

A I think that I will just read them here.

In the first place, these petty misunderstandings which are so irritating to men and management, in the absence of a constructive attitude towards one another, have disappeared.

Physical working conditions, safety, sanitation, and lighting and shop cleanliness and the like have greatly improved.

The whole matter of education and training and selection of employees has been raised to a much higher level. So-called systems of wage incentive systems, with their dubious value, have been found to be unnecessary, and are not employed. That is an advantage from the employee's viewpoint because they are very suspicious of things of that kind.

The program on these several railroads has played a conspicuous part in establishing certain working conditions which had been changed in the past under circumstances that led to this strike difficulty, and labor difficulty of 1921 and 1922.

It has increased the regularity of employment, both in the shops and on the roadways of these railroads. It has helped substantially to bring back railroad work to railroad shops, and prior to that time much work had been farmed out.

It has been directly responsible for securing the establishment of new standards of employment, namely, vacations with pay, and it has helped to increase wage income, naturally, when employment is stabilized, and the hourly rate as well as the yearly total.

The theory behind the whole plan, in that connection, is that the employees would share from the benefits as nearly as they could be determined.

It has given the employees a new reason for wanting to join and play a constructive part in the organizations of labor, and by that token, in the conduct of the railroad.

Q What about the management?

A From the viewpoint of the management of the railroads, the policy has reduced the petty annoyances and labor disputes to a minimum, and improved railroad service by bettering service, and decreasing locomotive defects, and so reducing train delays.

It has through its insistence on regularization of employment, also regularized production of shops, thereby increasing efficiency.

It has reduced material expenses, through the interest developed on the part of the men in material conservation.

It has improved shop efficiency and economy not only through the interest of the men in production but also through the mobilizing of thousands of useful practice ideas latent among the employees.

It has stimulated the managements to devise and introduce improved methods of shop operation, work planning and the like.

It has greatly improved the morale of the railroad, and has greatly improved the confidence of the

public in those roads that have seen fit to adopt a program of that particular kind.

It has increased the prestige of the carriers.

Q Now, in addition to confidence on the part of the public, what advantages briefly has the public derived as a result of the operation of these plans?

A Which incidentally, I might observe, it is very desirable—have you reference to anything in the report?

Q No.

A I might preface what I have to say on that score, that obviously you might label cooperation between labor organizations and management—it can only be sound if it contemplates benefits to the public as well as to the railroads and their owners and the employees.

The plan, in short, might be referred to as cooperation for mutual benefit and public service.

In that connection, there is no doubt that the plan, because of the factor of greater safety, and for greater concern on the part of the rank and file in the quality of service which the railroad renders, are all matters of decided public interest, and it is along that general line that the plan can be said to have justified itself from the public point of view.

I would say that that is, generally speaking, evidence of the general reputation which these enterprises enjoyed, that have seen fit to adopt a program of this particular kind.

Q I show you a pamphlet called "The Partner—The New Labor Era" and ask you whether or not it contains a speech delivered by you on the same occasion that Sir Henry Thornton of the Canadian National Railroads delivered a speech before a convention of the American Federation of Labor.

A Yes.

Q And ask you whether the report of the speech as you delivered it is contained therein.

A Correct.

Q Does that contain a summary or a discussion by you of the management cooperation with employers that you have been discussing?

A It does.

MR. WIRIN: I offer that in evidence as the Board's Exhibit.

MR. SMITH: You mean the unions-management.

MR. WIRIN: Yes.

MR. WIRIN: I offer it in evidence.

CHAIRMAN MADDEN: It is admitted as Board's Exhibit 29.

(The document so referred to was received in evidence and marked as Board Exhibit No. 46, Wheeling Steel Corporation; Board Exhibit No. 89, Jones & Laughlin Steel Corporation; and Board Exhibit No. 34, Crucible Steel Company of America.)

MR. WIRIN: I offer in evidence merely that portion of the pamphlet which contains Mr. Beyers' discussion. It also contains the speech by Sir Henry Thornton, as well as a foreword by William Green. Those are unnecessary for this record.

MR. CARMODY: Of course, Sir Henry Thornton's statement with respect to this is based on his own first-hand knowledge of how this plan worked on the Canadian Northern Railroad, and I should think that unless the record is unduly burdened, it might be a part of this. I happen to know of his own interest in it, and his knowledge of how it worked.

I don't know what he says in this pamphlet.

MR. WIRIN: I will say that I prefer to have the entire pamphlet in evidence, because Sir Henry Thornton does represent the employers' point of view, and Mr. Green's reaction to the plan representing the reaction of American labor, is also worthy of notice, so we now offer the entire pamphlet.

CHAIRMAN MADDEN: It is received.

BY MR. WIRIN:

Q Now, Mr. Beyer, what would you say are the requirements or the conditions precedent for the plan working?

A I think the best thing that I can do is just read what I have here set down.

Q What are you reading from?

A A lecture which I presented at Harvard, under the auspices of Wertheim Fellowship, "Experiences with Cooperation between Labor and Management in the Railway Industry."

The first prerequisite is as follows:

> "The right of employees to choose their own organizations and representatives, absolutely free from interference or help by management, must be recognized. In other words, there must be true freedom of association for the employee as well as for the employer."

Q Why is that so, if you can amplify it? Why is it necessary before the plan can function, that there must be freedom of association on the part of the employees, and that that must be recognized by the employer?

A Simply for the reason that if the employer attempts to dominate the situation, the employees will not feel free to respond, and will consider that they are being denied something which should be, and is their right, as they feel and understand the relationship which the plan contemplates.

If the employer dictates, or tries to control, the type of organization, or the representatives of the employees, or pays the representatives of the employees, naturally the employees become suspicious of anything that such representatives may suggest to them, by way of what they might do to help out.

Q That answers the question. Now, what are the other requirements?

A The plan calls for genuine collective bargaining:

> "Genuine collective bargaining must be established, resulting in written agreements as to wages, working rules, and the prompt and orderly adjustment of grievances."

I emphasize the latter because that is just as important as the making and maintaining of an agreement as between these freely chosen organizations or freely established organizations of employees and the management.

Q Can this plan work without genuine collective bargaining, and if not, why not, and does the plan assume the existence of the recognition of a union or representatives of workers?

A What the plan contemplates is true freedom of association. Obviously, no plan which calls for an organized relationship can work without an organized relationship.

Q In other words, would this plan work if there were not collective bargaining?

A In so far as collective bargaining connotes and requires organizations of employees, and in so far as collective bargaining is only genuine if those organizations of employees are free and have been developed without interference and control and domination by management, the answer is yes.

Q All right. What other requirements are there?

A The next requirement—and this is perhaps the most important of all, because simply collective bargaining does not often by itself make it possible, that is cooperation.

> "Management must conceive of the unions as potential assets rather than as liabilities, and be willing to accord them constructive as well as protective functions, i. e., to accept their help in furthering the purposes of the management—improved service to the public, especially."

Now, then, fourth:

"Management must agree to do everything within its power to regularize employment; and consider that this is as important as maintaining the financial credit"—or as important as maintaining financial credit; and by that same token, of course, the program contemplates, and that is inherent in all that I have said, that the men and their organizations of labor must be willing to extend the help which the plan contemplates. That is, through their organizations of labor and their spokesmen.

Q What other requirements are there?

A And then, fifth: The question of sharing the benefits, from time to time, to keep interest aroused in the plan.

Now, obviously, since the benefits first accrue to the management, it devolves upon the management to share those with the men. That results in furthering more efficient operations, and things of that kind.

And then lastly, this is always exceedingly important, while all of the foregoing propositions have to do more or less with the matter of spirit, the last is a practical matter, and calls for the establishment of joint relationships, administrative machinery for carrying the program into effect.

Q I call your attention to divisions of Section 8 of the National Labor Relations Act, which describes certain practices by employers, and declares those practices to be unfair labor practices, and I ask you whether or not the plan which you have described can function upon the commission by employers of any of those acts, with particular reference to discharges, company dominated or sponsored or financed unions, or other discriminating acts by employers against employees?

A My answer is that in the face of such practices, it will become very difficult if not impossible to bring about the constructive relationship between labor and management which I have described.

Q Now, I call to your attention a reference on page 30 of your Wertheim lecture, the following language:

> "With the elimination of the major cause for disputes—namely, differences about the status of the employees' unions—and with the emphasis on the prevention of grievances, the energy of management which was formerly dissipated in adjusting labor disputes is devoted under cooperation to better planning and performance."

With particular reference to the phrase "differences about the status of the employees' unions" state whether or not it has been your experience that the question of the status of employees' unions ordinarily is an important cause of unrest among employees.

A As long as there is doubt about the status of the organizations of employees, there is unrest, and there are all kinds of difficulties, misunderstandings, and there is a distinct lowering of morale in the enterprise as a whole.

Those doubts must be resolved, and should be resolved, preferably by peaceful, orderly methods, such as an election, rather than by a show of force.

Q Now, I think that I have one more question, and it is this: Does this plan of cooperation, or these plans of cooperation which you have been describing, do anything to the employee in so far as his dignity or responsibility in the industry is concerned?

A It is my observation, and it has been my observation, that with the acceptance or with the resolution of the misunderstandings and about the right of men to organize, the acceptance on the part of the management, for example, of the organization of men, the making and maintaining of agreements between such organizations, and finally the growing of these agreements into a general cooperative relationship, the purpose of which is to serve the public, has a very stimulating effect, upon the rank and file in its enthusiasm,

in its feeling of security, in its attitude,—in other words, in its concept of the part, and the constructive part, that it is playing. It makes, as I like to express it—it makes for a genuine concept of citizenship in industry, and employees do not feel merely as a wage earner who is there to get what he can for a few hours that he works, but he feels that he is playing a dignified, helpful, constructive part in a useful enterprise.

Q Do you think that you can have permanent and ultimate peace until the worker is in that psychological mood?

A I think that as long as we do not have a relationship, or a worker does not feel that way towards the concern for which he works, he isn't giving of the best, and that in turn may result in serious breakdowns, in the way of industrial unrest.

MR. WIRIN: That concludes my questioning.

BY MR. SMITH:

Q I would like to ask just one question: Mr. Beyer, the Board had before it recently a case involving a charge that the Columbia Enameling and Stamping Company, of Terre Haute, had refused to bargain collectively with the representatives of the employees. One aspect of the testimony in the case revealed this situation:

The union, in negotiating with the employers, proposed among other things that it would like to assist the employer in developing greater efficiency in the plant.

To this proposal, the management replied coldly in a letter that the matter of efficiency was in the hands of the responsible officials of the management, and that they were entirely competent to discharge that task; and in view of your experience would you say that that attitude of the employer was short-sighted?

A I certainly would say that that was exceedingly short-sighted.

BY MR. CARMODY:

Q Mr. Beyer, your testimony here refreshes my recollection with respect to a sort of report that Daniel Willard, president of the Baltimore & Ohio Railroad, and yourself, made to a group in New York, a few years ago, a luncheon group—I have forgotten the name of the organization that gave this luncheon, but it has to do with better relationships in industry, and leading industrialists were active in it, and as a matter of fact I think it was an organization set up by Theodore Roosevelt, at the time he was attempting to adjust the anthracite coal strike.

But at any rate, to get back to this joint report, I sat immediately across the table from Mr. Willard, and yourself, and had during the luncheon considerable conversation, particularly with him.

Now, I am going to ask you whether or not your own recollection of what happened with respect to this management-cooperation agreement, agrees with what I think he said at that time.

I think he said that the idea was proposed to him by Mr. Johnston, who was at that time the president of the International Association of Machinists.

A Yes.

Q And that he, Mr. Willard, was skeptical as to whether anything could come from it, that Mr. Johnson came back more than once, and on one of those occasions he brought you with him, to explain to Mr. Willard that you would be the engineer who would actually carry on the effort to get the unions to cooperate intelligently.

Is that true?

A That is substantially correct. What actually happened was that both Mr. Johnston and I saw Mr. Willard at one and the same time, but prior to that someone else had broken the ice, as it were, with Mr. Willard, and it developed that he was more than ready

to accept and try this idea out in practice, but Mr. Johnston and I had been working more or less consistently to seek an opportunity to try out this program, and we found it on the Baltimore & Ohio Railroad.

Q Am I correct in saying that Mr. Willard said at that time that he chose for the experiment the Glendale Shops, which were so bad in morale and so low in efficiency, that the company was thinking of closing them entirely?

A That is substantially the situation, although I tried to make it clear when I first spoke, that the situation was somewhat unfortunate, because we were just coming out of a national strike, and that strike had left the Pittsburgh shops in a particularly bad way, and the theory at that time, perhaps you can recollect. Mr. Willard said that the natural thing would be to pick the shops where the relationship between men and management was fairly satisfactory, and not the worst shop on the railroad.

At all events, we picked the worst one, and demonstrated that you could change these ideas and attitude on the part of the rank and file and local officers in a bad shop as well as you could in a good shop, and my general experience in that regard has been that it is rather interesting, if I may elaborate upon that point.

But for example, subsequently we came to the Cumberland Shops of the B and O, and they had been manned by strikers from the Western Maryland Railroad—men that couldn't get along on the Maryland and Western Railroad, simply because of the attitude of the management to deny these men, because of their stubborn ways, and we found those men just as enthusiastic for this cooperative idea as apparently in the mind of the management as they had been unenthusiastic for the ideas of the management on another railroad.

And furthermore, in Winnipeg, where, as you perhaps know, is a large center at Western Canada, where

the town itself and everybody in it was tied up in a general strike, and we came into that atmosphere, with all of the hangovers, and got the men and management, and the men through their union, to accept this idea, and found that it just changed the whole situation, and from people that were indifferent, or hostile to the industry was being run, or those particular shops were being run in Winnipeg, got them to go along with it, simply because of the willingness on the part of the people in responsible charge of the enterprise to concede some of these simple rights as they are spelled out in Section 8 of the Act, and that is what it boils right down to.

MR. WIRIN: You mean the National Labor Relations Act?

THE WITNESS: Yes.

BY MR. CARMODY:

Q I have two more questions: Does my memory serve me correctly when I say that at that meeting you said that one of the things you did was to attend the union meetings, and the meetings of the unions in their lodges, and that as a result of the actual experience with this plan, the whole tenor of those meetings changed from a discussion of grievances to a discussion of waste and means for bringing about more efficient operation of machines, and planning, and so forth, in the shop?

A Correct.

Q Is that true?

A That is absolutely correct.

Q One more thing: Did this plan save money for the company? That is, in the Glendale shops of the B and O?

A I am sure that it saved money in those shops. I think that I can illustrate that question best by indicating that the railroad company, subsequently, about four or five years after the plan had been in effect, got together with the men and agreed with them, as to

a division of the proceeds, and the men took their share in the form of a wage increase, and the way they figured it out, of course, it couldn't be done to the last dollar, but I think Mr. Willard figured out that it saved either $2,000,000.00 or $4,000,000.00, I don't remember what it was, up to that time; it was about 1926 or 1927, and he said that "I will divide that fifty-fifty with the men" and on the strength of that they were given a wage increase.

In Canada we had a similar experience, because there, as one of the rewards of cooperation the management of the Canadian National gave the men a week's holiday with pay, and they did it after very mature consideration and realizing that it was worth while to do so, as far as they were concerned, and that it was only a fair division of the proceeds which resulted from this arrangement.

Q Were you present at another meeting at which I talked to Mr. Willard, and at which he told me that as a result of this arrangement over the property, they had taken all of the time clocks out of the shops, and saved a great of money by that process, and they had taken them out by arrangement with the men whereby the men agreed to come on time and to leave on time, and to give the company the full time for which the company paid, without the necessity of checking in through a time clock.

A That is absolutely correct. That is just one of the many concrete, striking consequences of that that were forthcoming from this particular arrangement.

Q One more question: Is Daniel Willard looked upon not only in the Railroad Industry, but generally throughout industry as one of the most progressive, efficient, and effective railroad executives on this continent?

A Well, of course, I can speak perhaps from my own viewpoint, but I would say generally speaking that he is, and perhaps the best proof of that is the

fact that when perhaps the biggest single labor negotiation job that was ever done in the industry had to be undertaken, he was the man that not only brought it about from the point of view of the railroads, but subsequently headed it up in the form of the Chairman of the negotiating committee, who negotiated a wage deduction arrangement, peacefully, and harmoniously, back in 1932, which netted the railroads of the country about $200,000,000.00 a year.

Q And some of these same organizations that you referred to participated in those negotiations through their national officers?

A Yes, they were on the other side of the table, and it was a national agreement with all of the labor organizations, for all of the railroads in the country, to my mind one of the most dramatic developments, and most dramatic illustrations of genuine labor relations statesmanship in the country that is forthcoming, and it is possible, rather, when there is a minimum of interference or denial of right of the employees to function in keeping with the principles that are under consideration here.

Q And the background of sound, stable, fair labor relations.

A Yes.

CHAIRMAN MADDEN: Thank you, Mr. Beyer.

(Whereupon, at 12:00 o'clock m., the hearing was adjourned until 2:00 o'clock p. m. of the same day.)

Alderson Wms

AFTERNOON SESSION

CHAIRMAN MADDEN: Let us proceed.

Whereupon

MORRIS K. BLACK

was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EMERSON:

Q Give your name to the reporter, please.

A Morris K. Black.

Q Mr. Black, you have been connected with H. Black & Company, have you not?

A Yes.

Q Would you state what your connection with that company has been?

A Well, my father founded that business in 1883.

Q Would you first state the nature of the business?

A It was engaged in the manufacture of women's outer-garments, coats and suits.

Q All right.

A He founded the business in 1883, and I became active in it when I came out of college in 1889, and his partner died in 1893, and I had to assume his duties and my father died in 1896, and left me to be the head of the business.

Q So that since 1896, you have been the active head of the business?

A Until the company went out of business in 1922.

Q And in your capacity as head of that business, were you familiar with the garment industry in general, and particularly with the Cleveland market?

A Yes.

Q Now, have you had any other connections with business establishments in Cleveland, and will you state what those were?

A Well, in 1908, we established in Cleveland a retail outfit for the garments primarily of our own manufacture, including that of related manufactures, and about 1898, we established a brand of garments, known as Wooltex garments, and in order to further the promotion of this brand we established our own outlet in Cleveland called the Linden Company, so that I was the angel of the Linden Company from 1908 to 1922. Upon the death of my brother-in-law, who was the

manager of that, I became president of the Linder Company.

Q Were you also associated with the Cleveland Chamber of Commerce?

A Yes, sir. I was always active in the Chamber of Commerce, and I was particularly an active member of the Housing Committee, and in 1914 I was president of the Chamber of Commerce.

Q Were you a member of the National Women's Garment Manufacturers' Association?

A Yes, I think that I was one of the principal movers in its establishment, and also in an endeavor to make the organization national in fact as well as in name.

Q What was the time of that organization?

A It originated in a group of manufacturers, and Cleveland was the largest group, and it included groups from Chicago, St. Louis, Toledo, and Cincinnati; and then we endeavored to enlist the interest of New York manufacturers, but we were never able to do that to any marked degree.

Q What was your connection with this association?

A I think I was president of it for at least one year, and one of the active elements in it throughout its existence.

Q Were you also interested—

A That organization did not busy itself with labor matters. It busied itself more with fashion matters, and with marketing matters, rather than labor matters.

Q Were you also associated with the Cleveland Garment Manufacturers' Association?

A Yes. As a resultant of the strike of 1917, some new arrangements were entered into with employees in Cleveland. There was organized to carry out this agreement, a local organization of manufacturers in Cleveland, composed of a number of manu-

facturers, and I acted as president of that for a number of years.

Q Were you one of the organizers of that association?

A I dare say I was.

Q About how many firms were comprised in the association?

A Well, there were said at that time to be 26 manufacturers in Cleveland, and I am relying upon my memory now, but I think that that must have included the dress manufacturers, and the dress manufacturers were a component part of this association, although there were two types of manufacturers, those that made coats and suits, and those that made dresses.

For a while our own factory made both, but at the time this arrangement went into effect we were no longer making dresses.

Q Were all of the coat and suit manufacturers of Cleveland in the association?

A I think that they were all in the association, and I believe that the Spederman Company, while they were in the association, were not members of the agreement with the union. That was the agreement that finally eventuated.

Q About how many employees were covered by the employers that composed the association?

A Well, the newspapers used to say at that time that there were 10,000, and I have never seen an accurate poll of them, and I wouldn't be able to substantiate 10,000.

Q You would say, approximately?

A Yes.

Q Would you state briefly the labor policies of your company, H. Black & Company, previous to this agreement that you spoke of in 1917?

A Well, in 1893, there was an outbreak in New York, resulting in a tie-up of the industry for several weeks, the busiest part of the year, I would say from

August to September, in an effort to establish a union in New York. Barringhass was the leader of that movement, and after a struggle of several weeks, highly important in a seasonal industry, a settlement was made, and I don't think that it resulted in an active union, but the strike did result in a union being established, not at all in control of the industry.

Then there were sporadic efforts to establish branches of the union in Cleveland.

Q I am speaking, just for the moment, Mr. Black, of what I meant to ask you was the specific labor policy of your company with respect to wages and working conditions.

Could you just tell us that?

A When I entered the industry, I went into the factory.

There were no labor relations except direct ones between the employer and the employee, and there was no established union in Cleveland.

I think that perhaps—I can't give you the exact date, but I should guess around 1900, or 1905, we favored the formation of an interim organization, asking the workmen to select their own representatives to discuss with the management whenever they wished, problems affecting their welfare, and with no limitations as to what those problems should be, and I think that there were periodic meetings between the management and the representative group.

Q How did the wages paid by your company compare with the wages paid by the rest of the Cleveland market?

A Well, there was no exact basis of knowledge. I think that the workmen regarded this factory as a preferable place to work, but there were a number of reasons, but I wouldn't be able to tell you positively just what the difference of the rates was. I think that the preference, if there was a preference, was based on a longer continuity of employment, rather than a marked differential in wage.

There may have been some differential in wage, but there were no exact statistics kept of those matters at that time.

Q Were there other reasons why your shop was preferred to those of other members of the industry, working conditions, or other reasons of that nature?

A Well, I think that there were perhaps pleasanter surroundings, and I think that there was more or less general recognition that the management was eager to do anything that it could to forward the interests and well-being of the workers. I think that we had a number of features that I think we were among the first to install a nurse in the factory, a welfare worker in the factory, to look into the home conditions of different people.

I remember one case that showed us a good deal, and unless we had provided somebody who put all of her time into that effort, we would never have found it out, but one of the cutters was rather lax in his work, and finally we determined to investigate his home conditions, and we found that he had in his home an imbecile child whose existence he and his wife were concealing from their neighbors and from everybody else, and they were sensitive about the fact that their child was an imbecile, and this child was growing up, and he was five or six years old by that time, and he was a constant worry to the parents, of course, and it resulted in neglect of the child, I mean intelligent care was lacking.

So as a result of that investigation, this child was put in an institution, and the parents said for the first time they had reason to feel that they were doing everything they could for this child, and before that they were impeding its existence.

That is a marked example.

I think that a good many of the girls came from more or less ignorant homes, and their own sanitary lives were—and it was necessary to tell them many

things that better instructed households would have cared for by instructions from their parents, and it was a surprising thing. When we built a new factory, at first the condition of the lavatories was deplorable, but many people hadn't learned the ordinary decencies of life, but in a comparatively few months that condition was entirely corrected.

Q Now, Mr. Black—

A If any of this is not germane, don't hesitate to limit it.

Q I just wanted to bring out the general attitude and labor policies of your company, toward its employees, as a matter of background.

Now, previous to 1911, did the garment manufacturers in Cleveland deal with the unions?

A No.

Q Was there a strike in that year?

A In 1911 there was a strike.

Q What was the purpose of that strike?

A Well, this union that had endeavored to form itself in New York in 1893, gathered new strength unto itself, and new leadership, and in 1910 again, after a prolonged struggle, succeeded in establishing itself as an important factor in the New York market, and in fact that union came to an agreement with the manufacturers' associations of New York, which were formed to surpress this strike, to have union recognition, and union working agreements, and in those settlements it was stipulated by the New York manufacturers, readily acceded to by the union leaders, that they would establish similar conditions in Cleveland in the shortest possible time so the following year this same movement came to Cleveland, and resulted in a strike in Cleveland that lasted five months, but was not successful in Cleveland.

Q The purpose of that strike then was to organize the Cleveland market?

A Yes.

Q How many employees would you say were involved in the 1911 strike?

A In the whole market?

Q Yes.

A There were several thousand, but just how many, whether there were over 10,000, I don't know, but somewhere between five and ten thousand.

Q How long did that last?

A Five months, from June to October.

Q You stated that it was not successful?

A No, it was not successful. It was completely unsuccessful.

Q Now, was there a subsequent effort to organize the Cleveland market at a later time?

A There was stationed there an agent of this union who carried on a very active campaign through literature, meetings, and so on, and he was a constant campaigner from 1911, or preceding 1911, to 1917.

Now, in 1917, the War broke out, and a number of the manufacturers in Cleveland wanted to help in the war, and therefore they expressed their willingness to improvise the manufacture of soldiers uniforms. The War Department stipulated the price that could be paid for these coats, that were to be made for the use of the soldiers, and I think the price set was 89 cents a coat.

Well, I don't think any manufacturer in Cleveland was able to make them for less than $1.75 or $2.00, or more, but yet they were willing to undertake this, not to make money out of it but to do their share of winning the War.

Now, I should say of the twenty-six manufacturers in Cleveland, I remember that there were seven or eight that volunteered this kind of service.

Q Was there an effort at this time, during the War, to organize the Cleveland market?

A Yes, the union then called a strike in all of the factories in Cleveland, particularly in these factories

that were doing this War work. That gave the War Department an active interest in it.

Q Will you state the basis upon which that strike was settled?

A Well, it was settled with an agreement between the manufacturers—

Q Before we go into that, how long did that 1917 strike last?

A Oh, I would say anywhere from ten days to three weeks.

Q Could you say how many employees were involved in that strike?

A I would say a very small percentage of the total market, maybe 10 per cent.

Q Now, would you explain the adjustment which came out of that strike?

A Well, we appealed to the Secretary of War to appoint an Impartial Committee to decide upon the questions that might arise, and we said that we would make an agreement with the Secretary of War, and any Commission that he chose to appoint. We would determine the matters according to the judgment of these referees, as they were called; and Mr. Baker was a Cleveland man, and the Cleveland manufacturers had a high degree of confidence in him, and they were willing to abide by any appointees that he might make, and he appointed three of the best men connected with the Labor Department, or the War Department, at that time, that was Professor Hopkins, who was president of Dartmouth, Major Rosenson, of New York, and a lawyer, and Mr. McLean, of New Hampshire, also a lawyer, and they volunteered their services, and acted in the capacity of referees, to whom all matters might be referred, either by the employees themselves or by any representative that they might choose, or by the employers.

And that was half and half union recognition, or indirect union recognition.

Q Was there an agreement at that time, which the union entered into?

A I don't know what arrangement they made with the War Department. When we had our hearing at Hanover, when some workers connected with the industry wished to testify before this Board, the committee sent by non-union employees, the union members withdrew from the meeting, and it was a gesture rather than anything else, and the referees heard the testimony of these men, but that just gives you a picture of the atmosphere in which the meeting took place.

Q Was there an agreement between the union and the Board of Referees, and between the union and the employers?

A I think that there was. There was some moral suasion rather than an agreement. As far as I know, the only written agreement was that between the manufacturers' association, and these referees appointed by Mr. Baker.

Q What were the terms of the agreement between the manufacturers' association and the referees?

A Well, I think that all matters that might be brought forward by workers in the industry, or by their representatives, were to be heard by the referees and determined according to their best and most fair judgment.

I don't think that there was anything else.

There was no limitation on it; but I am trying to recall something that happened twenty years ago.

Q It was in essence a plan for the arbitration of disputes arising in the market?

A Yes. And a perpetual Board of Arbitration, and I think that is rather important because I don't think that the manufacturers would have entered into it, at least, our factory would not have entered into any agreement except with this perpetual Board of disinterested and impartial representatives, representing the public point of view.

Q Did that Board continue after the War?

A Yes, it did. It continued for a long period of time. I was active in the industry until 1922, and I think it continued at least until 1929, or 1930.

Q Was there at a subsequent time an agreement entered directly between the union and the manufacturers' association?

A Well, Mr. Carmody reminded me of this this morning, and I think his recollection of this is correct: That after a year and a half or two years of this indirect contact with the union, through this partial recognition, a direct agreement was reached, and that difference was more apparent than real.

Q Would you state some of the subsequent members of the Board of Referees, after the original board?

A After service of perhaps six months or more, Mr. Hopkins felt that he could no longer serve, and that as president of Dartmouth, his duties were too onerous to allow him to continue this activity, and so he resigned, and Judge Julian Mack was appointed in his stead.

Judge Mack served for two or three years, and perhaps a longer period than that, and I think Judge Mack was active as long as I was active, and perhaps for a longer period, and then I understand that he resigned, and in his place was appointed Dr. Hollander, Professor of Economics at Johns Hopkins, and in more recent years, Morris Cook of Philadelphia, was appointed, I think, in conjunction with Dr. Hollander, but in place of Major Rosenson.

Q Is Morris Cook the man who is now head of the Rural Electrification, is that the same man?

A I dare say it is, but I am not positive. He was active as an industrial engineer for a good many years. It seems to me, I have always taken it for granted he was the same man, but I am not positive of it. I never met Mr. Cook myself.

Q What was the machinery for handling disputes

during this period when the Board was functioning—suppose a dispute occurred in the plant, what was the method of handling that?

A Well, it could be adjusted between the management and the individual, and if the individual was not satisfied with the adjustment, he could take it up with the shop committee, and the shop committee then took it up with the management.

Q The shop committee representing the union, or a committee of the union?

A A committee of the union, yes. And if they were successful in adjusting it, it went no further, and if they were not, then the union members took the question up with their representative, who was a man by the name of Perlstein, and the manufacturers' association had a representative by the name of Butler, and Mr. Perlstein and Mr. Butler adjusted them between them, and if they couldn't do anything with it, it came before the Board of Referees.

MR. CARMODY: May I interpose one question?

BY MR. CARMODY:

Q Did the Board of Referees not have an Impartial Chairman who heard grievances of this sort for them?

A Yes, there was for a considerable period of time, Judge Mack's brother acted in that capacity for a while, Mr. William Mack, and afterwards I think that that was discontinued, and the machinery went on without an Impartial Chairman.

Q But were the labor representative of the manufacturers, and the member of the union—

A But for a considerable period of time, Mr. Mack and perhaps other men—do you remember any other men?

Q Dr. Leiserson served for a short time, and Mr. Doolittle served for a short time, and Mr. Charles Barnes was there for a short time, but Major Mack was there for a longer period than any of the others.

A He must have been there for two or three years.

Q I think he was.

A Thank you for making that clear in my memory.

BY MR. EMERSON:

Q During the period that this machinery was functioning, and you were familiar with it, were there any strikes of major importance in the market?

A There were no strikes; there were in some of the other shops, but the union called them stoppages of work, but the union refused to call them strikes, and they would last a few days, but whenever it came to the attention of the referees, they immediately said, "We will not even hear this dispute until those men are back at work" and that occurred with some frequency in the early days of the agreement, and gradually disappeared.

Q So that these stoppages were not major interruptions.

A No.

Q Now, would you state from your experience whether you consider such machinery a practical method of promoting peaceful relations in industries such as yours?

A Well, I believe that they are, if they are under control; in other words, I think that an agreement merely between a manufacturer or a group of manufacturers, and a union, is likely to be harmful as well as helpful. I think that it would be more harmful than helpful unless both of these elements can be under the control of a group in which the public is represented, that has at least an equal voice with the management and the representatives of labor.

In other words, I believe, and my observation would bear this out, I believe that unless there is that body of referees or control with the public interest very clearly and sharply defined and emphasized, that the harm that might result, and that does result, and

has resulted from relationship just between a militant or non-militant labor organization, and a manufacturer or a group of manufacturers, is likely to be harmful rather than helpful, or it runs a great risk of being harmful.

BY MR SMITH:

Q You mean in the sense of exploiting the public?

A And harmful, against exploiting of labor itself.

Q It would be hard, would it not, to gauge such exploitation as might take place that way, as against the exploitation that might take place when labor is totally unorganized, and perhaps the public is more protected on a price basis that way, but where the employees themselves have no form of self-protection, isn't that so?

I mean, the possibilities of exploitation exists in either direction?

A I think that human beings are inclined to exploit fellow human beings, and that applies whether he is an employer or labor leader or something else, and as one of the workmen in our factory said, "I used to have one boss, and now I have two."

He also didn't realize, or didn't say, that he had a supreme Board which was this Board of Referees.

Now, my observation has been that unless the workman himself who is protected by such a Board of Referees, he is subject to very great exploitation on the part of his union, that means preference in jobs, and discrimination against him as to whether he is part of the inside gang or not part of the inside gang; whether he is an ardent supporter of the administration within the union, or otherwise.

In other words, I can't see any real progress to this very important problem of employee and employer relationship, except by the emphasis of the third party which has been too much the silent partner, and that is the public.

I think that there are great hopes of this movement

if all three elements are present, and active. I am not at all hopeful unless all three are there.

I think that what progress we made is that due to the fact that all three were in there. The progress wasn't perfect, and I think it should have been better, but there was progress.

BY MR. CARMODY:

Q Would you say that that would be justification for the creation of Boards such as this, not perhaps this particular Board, but Boards such as this, which under the general supervision of the Congress and by appointment of the President, does undertake to develop better relationships between these two contending groups?

A I certainly do, and I think that unless that is undertaken, the mere recognition of collective bargaining which is an important step forward in this movement, doesn't bring about enough progress to make it worth while.

Now, you can't get along without that element, but if people don't realize that that is only part of the process, and I think that that is why the labor movement in America has made such slow progress as it has, or one of the important reasons why it has.

BY MR. EMERSON:

Q I have just one or two more questions, Mr. Black.

Did the employees of H. Black & Company, did they become members of the union and deal with you through their own organization?

A Well, let me see. When this strike in 1911 took place, I think that there were not over thirty-five avowed unionists in the factory, but when the strike was made effective, two-thirds of the employees stayed away from work, and the other third came to work every day, running the gauntlet of militant picket lines every night and every morning.

Q This was in 1917?

A The 1911 strike. Now, in 1917, no larger proportion of confirmed unionists were present, a very small proportion, but our own management seized this opportunity to make what they believed or what I believed was a step forward towards the right kind of relationship. We were willing to entrust our business to an experiment, and if at least the fundamental conditions were such as we believed might ultimately work out on the basis of justice.

Q I have one other question. In your opinion, from your experience in these matters, are elections conducted by an Impartial Agency such as a Governmental Board, practical and satisfactory ways of determining the representatives of the employees?

A Well, I think that that is the greatest step forward that has been made in industrial relationships that I am cognizant of in the last twenty years. That is only a beginning of it, but I believe that that makes possible a true expression of choice on the part of employees, no matter how it may fall out, and no matter how it may develop. I think that that is an omen of great promise, and it is little more than a promise as yet, but the fact that there is machinery that may be set up, and that demonstrates a method by which that very important element can be determined, is of tremendous importance and value.

MR. EMERSON: Are there any other questions by the Board?

BY MR. CARMODY:

Q I do have this question. I should like to ask you, have you recently acted as arbitrator, in some labor case?

A Yes. About two years ago I was appointed among others to sit on the Cleveland Regional Labor Board. Dr. Wickerdon, the president of Cassen School of Applied Science in Cleveland, was the chairman of it, and there were ten other representatives appointed, five of them to be union representatives, and five of

them to be employer representatives, and I was asked to sit on that Board.

I said that I was willing to sit as a representative of the public, but not as a representative of the employer's viewpoint, and I didn't want to feel that I owed my appointment to or was responsible to any employer group for any position that I might take.

I didn't feel that I could be of any use, if I were to be hampered in that way.

They accepted my appointment with that condition, but I think that they still regarded me as an employer representative.

I sat on a number of cases, and the method then was to meet once a week or twice a week, and Dr. Wickerdon was Chairman, and as many members as could be present, and we would hear the different cases that came before us, and then we tried to decide them as best we could, and sometimes there was almost a unanimous decision one way or the other.

Q There were some representatives of organized labor, too?

A There were five of them, and five that occupied or were occupying employer positions, and their understanding, at least, and perhaps their sympathies, would be more inclined to be towards the employer point of view, because they had been employers, but—

CHAIRMAN MADDEN: And then there were five in the middle?

THE WITNESS: Dr. Wickerdon was supposedly the only man in the middle.

MR. CARMODY: That was under the old Wagner Labor Board and also under the National Labor Relations Board that preceded this Board.

THE WITNESS: Dr. Wickerdon developed, I think, a very unusual ability in this field, among some other fields, but in this field he was peculiarly well qualified by quality and temperament.

MR. CARMODY: That is very interesting, because

while he had a great deal of experience as an educator, he had no previous experience with labor relations, as I remember.

THE WITNESS: He showed sound judgment, and tact, both of which—as well as a sense of fairness, and subsequently they appointed a man by the name of Lynn, and he too showed a surprising capacity for this kind of work. I think he is still doing this work, under this Board here in Cleveland.

MR. CARMODY: Then did you not have some other experiences as arbitrator, where you were a single arbitrator?

THE WITNESS: More recently, I have been appointed by Dr. Wickerdon, under an agreement by the International Women's Clothing Workers, and between a manufacturer in Cleveland, by the Gross factory there. That was made a year ago last March, and they had a very important difficulty in June, a difficulty so important that I think it has been crippling to the company, and to the workers in the company, for several months.

There was no strike, but it wasn't until the end of September that Dr. Wickerdon was called upon to exercise his authority to appoint an Impartial Chairman, and so he appointed me, and for the past six or seven months I have been working in that capacity.

I think that I have got to make ten decisions, and some of them have a good deal of importance. I think that that proved once more, to my mind, at least, that there is an absolute necessity for a constant Board of that kind, and how well I did it I am not able to say, but that I did it better than the vacuum that existed before, I think that that is unquestionable.

MR. CARMODY: A moment ago, you and Mr. Smith started a debate here with respect to the relative virtues of these Boards. I don't know how far you got.

What were you seeking to develop, Mr. Smith? I was interested, because Mr. Black has had for many

years a very great interest in having a public body of some sort interested in settling these disputes. He thinks that a great deal of time and energy and money has been wasted because there hasn't been a new Federal body, presumably representing the general public, that might participate in these disputes and help to find a way out that would not only help the disputants but protect the public too.

I don't know how far he wants to go with that.

MR. SMITH: I think perhaps you misunderstood from my end. What Mr. Black said was that he was fearful that if you had in the picture only the employer and his organized employees, that then you would get exploitation, presumably of the public.

My question was directed to the fact of whether in the absence of the public, and the absence of organization on the part of the employees, you wouldn't also then get another form of exploitation, namely, by the employer of the workers.

Mr. Black replied, "Yes"—that that might be so, but he thought that the third member was necessary to protect both the workers and the employer as well as the public.

THE WITNESS: I think, unquestionably, either voluntary or involuntary exploitation of the workers goes on, on the part of the employers. I think that there is the pressure of expedience, that brings about exploitation, although that may not be the direct objective, so that I do think that the workers do need this collective representation, but I think that that is only part of the cure, and unless it goes further, and results in a well-rounded Board, that represents all three interests, and realizes that it is a triple problem, and not a double problem, then no real progress will be made, and it is in favor of that broadening of duties similar to your own, that is a necessity; that unless that broadening process takes place, the half-way measure is doomed to disappointment.

Now, I don't know whether I make that clear or not.

MR. CARMODY: Well, assuming that these labor disputes between the employers and employees, whether they be represented by one union or another, must be brought before a public tribunal, do yo believe that the presentation of material, defense, if you please, and material, and data before such a B ard, tends to stimulate the management, and tends to increase its sense of responsibility to the public, or not?

THE WITNESS: I think unquestionably it would, that most human beings want to do the right thing, when they know what it is, but they think that their selfish interests are the right thing unless it is more clearly analyzed by them or for them, and such a discussion does bring it about.

I don't know that such a Board as I have in mind, or such as you represent, really, requires coercive powers. I think the power of public opinion itself, and the appeal to the sense of justice that is in most people, will accomplish two thirds of the benefit.

But that analysis, an analysis on the part of both high-minded people, and experienced people, and also experienced people, as I look back at this Board that we had in Cleveland, that is twenty years ago, and in many ways it instituted at that time, at least in that industry, steps that had not been considered before, and we took into very important account continuity of employment, and I think that it was recognized, and I think that it was not recognized in this country that continuity of employment was a very important element, and today the depression has proved it to us.

MR. CARMODY: Did you note at that time—

THE WITNESS: We had three lawyers, and I don't think that we could have had more devoted men, and at that time they were not receiving any remuneration for it, and it was their interest in the problem that provided that very generous attitude on their part,

but as I look back, instead of there being three lawyers, or one college president and two lawyers, there should have been one lawyer, and one economist, and one practical business man, one who actually had felt, himself, handled, himself, such problems as these, because—

MR. CARMODY: You are speaking about the personnel of the Board?

THE WITNESS: Yes, from the personal point of view, we could never find, no industry could find, three higher minded or more intelligent men, but they lacked certain experiences that would have made them more competent to determine some of these questions, and therefore more progress would have been made.

Now, another element that was lacking was a recognition that we manufacturers and union leaders, and workmen, all required a lot more education that we had yet had; if we had realized that fact, and had an educational campaign in connection with it, we would have made more progress.

MR. CARMODY: Did you not find that your dealings with the union gave you an opportunity to present to the union, to its officers, and to the members of the union, many of the problems of marketing, and merchandising, that faced the manufacturers at that time?

THE WITNESS: I think we did, but we didn't do it often enough, or thoroughly enough. We did at a critical moment, when it was a matter of wage determination, and that should have gone on in between here, so that when the time came for the hearing, there would be more understanding of the problem involved, rather than get into twenty-four hours or forty-eight hours, all of the complex problems that beset the industry.

MR. CARMODY: Did you not as a result of your effort to improve labor relations in that market, through the Board of Referees and otherwise, establish a guarantee of 14 weeks work, at the time when, as

you said a moment ago, there was no such guarantee known in American industry?

Wasn't that part of the arrangement?

THE WITNESS: Yes. We found that in this highly seasonal fashion-ruled industry, there was a variation between 48 weeks of continuity of employment that existed in two of the factories of Cleveland, and about 32 weeks that existed in quite a number of others, and 26 weeks existed in New York and a wide variation of continuity, and therefore we appealed to the referees to establish a differential in rate, based upon continuity, and I think that there were 42 weeks, and the rate standard was on the basis of 42 weeks.

Now, then, 5 per cent of the pay roll was set aside, in addition to the pay rate established per week, was set aside as a fund. If the employer gave to his employees 42 weeks of employment, in an industry which I think averaged 32, he received back his 5 per cent; but if he did not give that amount, that 5 per cent of the total pay roll was divided among those employees, as far as it would reach, giving to those that had less than 42 weeks, two-thirds pay for the time they were out of work.

Now, that was the crude method by which they tried to bring about a greater continuity of employment.

I think its most effective use was displayed by a number of manufacturers who never had dreamed of continuity of employment beginning to devise ways and means by which they might recapture that 5 per cent, and quite a number of them were successful in doing so.

MR. SMITH: I think I understand your argument, that along with organized employers, and organized employees, you need this third element which we might perhaps call the organized public, to set the balance.

THE WITNESS: Yes.

BY MR. SMITH:

Q Now, thinking in terms of the purposes of this Act which is to protect employees in their right to organize, and to bargain collectively, I think that I correctly understood from your testimony that you would concede that the right of the employees to organize, free from interference by the employer, is one of the fundamentals in this whole ultimate picture which you are building up.

THE WITNESS: Yes, I think it is. But I think, if you really want to accomplish the purpose you have in mind, it has to take the additional step, and recognize it.

CHAIRMAN MADDEN: Thank you very much, Mr. Black.

THE WITNESS: I wonder if it would be possible for me to have a copy of what I have testified here for my own recollection? If it is against the rules, don't hesitate to say so. I don't want any privilege that others don't have.

(Whereupon there ensued discussion off the record.) Thereupon

FRED C. CROXTON

was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WIRIN:

Q May we have your full name, please?

A Fred C. Croxton.

Q Where do you live?

A Columbus, Ohio.

Q Have you in recent years interested yourself in labor relations?

A Well, going back some years, I was mediator for Ohio, some years back, and for many years I have been interested in the labor problem.

I drafted the plan for handling labor in Ohio during the War, and submitted it to the Governor, Governor Cox, and after five minutes examination he said that it was approved and you are drafted without compensation to administer it, and I did throughout the War, and was Chairman of the Labor Committee, and vice chairman of the Council of Defense, and Federal Food Administrator of Ohio, all of these dollar a year jobs, and I think I might add for your record that as Federal Food Administrator in every county where there was organized labor, there were representatives of organized labor and of management on the food committee.

I have always been the "in-between" in the group.

Q What was your experience as mediator in the State of Ohio?

A There were many strikes which I mediated.

Q Was that by request of some official?

A I was the State Official.

Q You were appointed for the purpose of mediating and adjusting disputes in Ohio?

A Yes.

Q By whom were you appointed?

A By the Industrial Commission of Ohio.

Q How long did you serve in that capacity?

A Two years and a half, that was 1914, 1915 and 1916.

And to completely answer your question, during the old Labor Relations Board, I believe that is what you call it now, I was the public representative on the Regional Committee, from the Cincinnati area.

Q Is that when Senator Wagner was Chairman of the Board?

A Yes.

Q That is the National Labor Board.

A Yes, that was Biddle's board.

Q That was the National Labor Relations Board.

A Yes.

Q Mr. Biddle was Chairman?

A Yes.

Q Have you ever acted as representative of the employer or workers in any dispute?

A I never have.

Q Your experience has been limited to an impartial or public representative?

A Yes.

Q Now, in November, of 1935, did you have an occasion to make an investigation with respect to labor problems in Akron, Ohio?

A I was requested by the Department of Labor, to serve on a fact-finding board, in the Goodyear Tire and Rubber Company controversy, on November 15th.

Q Of 1935?

A Yes.

Q Who were the other members of the Board?

A Dr. Jonh A. Lapp, and Hugh S. Hanna.

Q I was selected as chairman by the other members.

Q Now, was your appointment and the appointment of the two other members of the Board in connection with or as a result of any agreement that had been made by the Goodyear Company with any of its employees?

A Yes, it was the result of an agreement made in April, 1935.

Q Did you have occasion to study and become familiar with the terms of that agreement?

A Yes.

Q Will you tell us what the substance, briefly, of the agreement was?

A May I refer to these, so that I will—

Q When you say you will "refer to these" you mean what?

A I am referring to the report of the fact-finding board.

Q Made by the Board to the Secretary of Labor?

A Yes, and is the unanimous finding of the Board, in every respect.

Q By the way, the other members of the Board, were they representatives, or was either of them a representative of labor or of the employer?

A They were not.

Q Was the entire Board—did the Board consist of impartial or public representatives?

A Yes.

Q Referring to the agreement that was made, what were the high lights of the terms of the agreement?

A The agreement of April 13, 1935, made after three days conferences with the Secretary of Labor, the management "agrees to meet with the employees and chosen representatives of any group of employees for the purpose of adjusting grievances and complaints and for the purpose of negotiating upon hours, wages, and conditions of employment for those they represent."

I will not read all of this unless you want it.

Q When you say "management" what is the name of the management?

A This represents the three companies, the Goodyear, the Goodrich, and the Firestone.

Q Rubber companies?

A Yes, of Akron.

Q Who signed the agreement for representing the workers?

A William Green, representing the American Federation of Labor, and Coleman Clahorty, representing the United Rubber Workers of America, and the three men, each of whom represented a local in the Rubber Companies involved.

Q Before that agreement was entered into—

A May I add one thing—another item in this agreement was that "if grievances are not settled satisfactorily, they shall be referred to a fact-finding board of three impartial members, and if this is not followed, the other party may be relieved of the conditions in this paragraph."

MR. CARMODY: That is an interesting clause there. What was that last clause that you read?

THE WITNESS: "If the recommendations of the Board are not followed by either party to the dispute, then the other party may be relieved of the obligations contained in this paragraph."

BY MR. WIRIN:

Q Was that agreement arrived at at the time there was a threatened strike in Akron, Ohio?

A It was.

Q Do you know approximately the number of employees that are in the employ of various rubber companies in Akron?

A Well, in that county, the average for 1934 was 36,276. That is the number employed on the 15th of the month of that industry.

Q Can you tell us approximately the number of employees that are employed by the three companies that entered into that agreement?

A I can't tell you exactly, but it would be perhaps 90 per cent of them.

Q And can you state whether or not those three companies represent a substantial proportion of the rubber tire manufacturing industry?

A The exact figures?

Q Approximately.

A Pretty close to 60 per cent, between 55 and 60 per cent of the tire manufacturers of the United States. I can give you the exact figures if you want them.

Q That is close enough.

Did the Secretary of Labor intervene in any way,

and have a hand in averting this threatened strike and in the agreement which ultimately was drawn up?

A The one of April 13th?

Q Yes.

A That came as a result of three days' conferences with the Secretary of Labor.

Q And these conferences were held in Washington?

A In Washington, yes, sir.

Q State whether or not during the course of those conferences, the management met with and conferred with representatives of the employees, and whether or not the Secretary conferred with one party, and then with the other?

A I understood that there were no joint conferences.

Q And the management at no time conferred directly with the employees?

A So I understand.

Q And was the management requested by the representatives of the workers to confer with them, and did the management prefer not to hold such conferences?

A I can't answer with reference to that particular period.

Q In any event, is it true that as a result of the intervention of the Secretary of Labor, this general strike in the rubber tire industry was averted?

A Yes.

Q Now, what was the occasion for the appointment of the fact-finding board in accordance with the provisions of the agreement calling for the appointment of a fact-finding board under certain circumstances?

A It was due to, primarily, the announced purpose on the part of the Goodyear Company—may I change "primarily"? I would like to change that word —but it was due to the announcement of the company

of a change in the working day from what had been in effect since October of 1930, of the 6-hour day, to the 8-hour day, with flexibility, and also due to alleged discrimination against the United Rubber Workers of America.

Q And now just so I may understand, what is the phrase "with flexibility" in terms of the discussion we are having?

A Under the plan which had been in effect, they had the 6-hour day, which the company had adopted in October of 1930, and if the demands for their product increased, they increased the length of the day, but what the company was asking, and what in effect was an 8-hour day, with flexibility downward, if production demands decreased but the company was anxious to get their employees on a 36-hour rate, and they had worked an average of 31 and a fraction during 1935.

Q Now, did someone make a request of the Secretary of Labor for the appointment of a fact-finding committee?

A The request was made by letter under date of October 25th, a letter from the Goodyear Local of the union, of the United Rubber Workers of America, and by telegram under date of October 28th, from the Lodge 208 of the International Association of Machinists.

Q Is there an organization at the Goodyear plant known as the Assembly?

A Yes.

Q What is the nature of that organization?

A It consists of a House of Representatives of 40 members, and a Senate of 20 members, and they are chosen by employees of the Goodyear Akron Company, and anyone is eligible to vote who is on the pay roll the day before the election date.

MR. CARMODY: Do you know whether that plan was introduced by John Leech?

THE WITNESS: It is claimed that Mr. Litchfield, President Litchfield, developed that plan himself.

MR. CARMODY: John Leech wrote a book, explaining his four-square plan, which he sold to, or got a certain number of managements to introduce into their plants, and I had the impression that that Goodyear plant was one of them, and I am not too sure today. I just asked whether you knew.

THE WITNESS: Full credit is given to Mr. Litchfield.

MR. CARMODY: Mr. Litchfield is now the president, and at the time he was production manager, was he not?

THE WITNESS: I think he was, yes. It was immediately after the War.

BY MR. WIRIN:

Q Now, as I understand it, upon this request of the labor union, the Secretary of Labor appointed a fact-finding commission of three impartial persons?

A Yes.

Q Did that commission go to Akron, Ohio, and conduct an inquiry?

A Yes, we began our hearings on the 22d.

Q And how long did your inquiry last?

A We completed our report, and the report was written here after we left Akron, on December 16th, 1935.

Q Did you, in the course of your inquiry, confer with representatives of the union, and workers who were members of the industrial assembly, and management of the union?

A We did. Of course, the request was wholly from the United Rubber Workers of America, and the International Association of Machinists. The Secretary, before the appointment of the committee, had conferred with the company, and indicated that she was going to appoint a fact-finding board, and had been assured by the factory management of their co-operation.

Upon reaching Akron, a telephone call awaited me from the Chairman of the Industrial Relations Committee of the Industrial Assembly, and upon communicating with them, they asked the privilege of presenting such facts as they had to the Board.

Every opportunity was given them to present those facts.

Q Did you listen to those facts?

A We did; and of course they had a great deal of information, because of their close contact, personally, with the workers.

Q Did you then make a report to the Secretary of Labor?

A We made a report under date of December 16th.

MR. SMITH: Was that Industrial Relations Committee of the Assembly a joint committee of management and employees, or just a committee of employees?

THE WITNESS: Employees.

BY MR. WIRIN:

Q Prior to the making public of that report—

A May I just give a little information off the record?

(Whereupon there ensued discussion off the record.)

BY MR. WIRIN:

Q Prior to the making public of the report which your committee made to the Secretary, did the Secretary communicate with the management or Mr. Litchfield?

A The Secretary did, and invited Mr. Litchfield to confer with her, and with the Board in Washington, and conferences were held on two occasions.

Q And then subsequently, was the report made public by the Secretary of Labor?

A The report was released early in January.

Q So that now it is a public record?

A Yes.

MR. CARMODY: Was Mr. Slusser in that conference?

THE WITNESS: He was not.

BY MR. WIRIN:

Q What were the findings of the committee as to whether or not the Goodyear management had failed to enter into negotiations with its employees or their representatives?

Please state whether or not the Board made any findings as to whether the management had entered into negotiations with employees or their representatives fairly?

A May I read the paragraph?

Q Yes.

A "The Fact-Finding Board is of the opinion that in the present controversy, involving hours, wages, and lay-offs, Goodyear management did not fairly enter into negotiations with employees or with any of their representatives, but rather promulgated a policy and then sought endorsement by representatives of employees or, in effect, merely gave notice concerning such policy."

Q What was the finding of the Board as to whether or not the Goodyear management, in dealing with representatives of the employees, had discriminated in favor of a certain group or against another group?

A "The Fact-Finding Board is of the opinion that Goodyear management, in dealing with representatives of employees, has discriminated between A. F. of L. unions and the Goodyear Industrial Assembly in reference to notices concerning changes in wage rates and conditions of employment, in freedom of contact with employees, in allowances for time spent on committee work, and in failure to give frank recognition to representatives of the unions as 'chosen representatives of any group of employees.'"

Q What were the factual bases for these findings,

now, with particular reference to freedom of contact with employees?

A The Industrial Assembly had frequent contact with the employees, and with representatives of the management, the foreman, or all of the people up the line.

Q When you say "contact" you mean the right to confer and discuss problems of employment?

A Yes; while the United Rubber Workers of America were somewhat limited, and they were not allowed to enter the plant except on the shift on which they were working and making their contacts.

Q I notice in the findings of the committee with respect to the following, you say,—I am quoting—

"Failure to give frank recognition to representatives of the unions as chosen representatives of any group of employes, that"—that the phrase "chosen representatives of employees" is in quotation marks.

Is that borrowed from the agreement?

A Yes.

Q What were the facts as to that?

I mean, the failure of the company to give frank recognition to chosen representatives?

A Based largely upon the two clauses preceding that, freedom of contact, and then failure to give notices, and members of the Industrial Assembly were given notices of lay-offs 24 hours in advance of the three-day posting on the bulletin board, and during that twenty-four hours they were free to take up any question with representatives of the management, and the A. F. of L. did not have that 24-hour notice.

Q Now, what was the condition among the employees in so far as peacefulness or unrestfulness—or what was the reaction of employees to these matters that you found in your report? What did you find the state of mind of the employees to be?

A Well, they didn't know what was going to happen. They felt that the management had been evasive

in its explanations, and they felt that with the increase in the length of the day that they would be expected to keep up the same speed for an eight-hour day, or for the longer day. They seldom used the term "eight hours" as they would for the shorter day, and they had speeded up with the shorter day, and the employees felt that they couldn't maintain the speed.

MR. CARMODY: You mean when the hours were reduced from eight to six in 1930, that the workers had speeded up so that they were producing more per hour during the six hours than they had been per hour in the eight hours previously?

THE WITNESS: Of their own accord.

MR. CARMODY: And then they were afraid that if the management changed from the six-hour day to the longer day, that the management would expect them to turn out as much per hour in the eight hours as they had been turning out in the six hours?

THE WITNESS: Correct.

BY MR. WIRIN:

Q What was their state of mind or reaction to that, in terms of content or unrest?

A Unrest. They felt that the older men in particular would not be able to keep up that pace.

They felt also, that with the increased hours that the result would be laying off of a considerable number of employees, and the estimate ran from 15 to 25 per cent, and the expression was often used by the employees, that it probably meant everyone who had been there less than five years would be dropped unless production should be increased beyond the estimates of the company.

Q I call your attention to the findings of the committee, that in putting this change in hours into effect, the committee found that the Goodyear management did not fairly enter into negotiations with their employees, but rather promulgated a policy and then sought enforcement by representatives of employees, or

in effect merely gave notices concerning such policy.

Now, what did you find the state of mind of the workers with respect to this conduct by the management to be?

Were they resentful about it, or what was their attitude towards this announcement by the management, without conference and consultation, and working the matter out with them?

A Very greatly disturbed, both members of the industrial assembly as well as the United Rubber Workers of America.

Q I want you to tell the Board what steps the Industrial Assembly took to prevent this change in hours? What was their reaction to it?

A On October 1, 1935, the Goodyear Industrial Assembly adopted what was known as Joint Bill No. 1, House and Senate in joint session.

Q It sounds like an Act of Congress.

A They are a Congress. "By the Rules and Regulations Committee.

"Subject: Standard Six-Hour Working Day.

"Whereas: Rumors are prevalent throughout the factory with regard to a return to the eight-hour working day, and

"Whereas: These rumors are causing considerable unrest among Goodyear employees, and

"Whereas: A large majority of these employees are demanding the retention of the six-hour day, and

"Whereas: The Goodyear Tire & Rubber Company has been a pioneer in the six-hour movement.

"Therefore: Be it enacted by the Sixteenth Goodyear Industrial Assembly, both bodies concurring, that the six-hour working day be adopted as standard policy in all divisions of the Goodyear Akron factory."

Q In that respect, was the Industrial Assembly in accord with the union?

A But they took action early, the Goodyear Assembly.

Q Just this question: While the Goodyear Industrial Assembly was taking the action which you have described, were the A. F. of L. unions taking similar action in their own way?

A A little later.

A All right. You might summarize the steps which the Industrial Assembly took, perhaps rather briefly.

A On October 17th, Mr. Susser, vice president and factory manager, appeared before the special joint meeting of the House and Senate, and explained the plans of the company.

Q You mean by that the intention of the company?

A Yes. But it was not given out in full until later than that. I should like to read one or two statements from his statement.

Q All right.

A He stated that at the last meeting of the Assembly the question of eight hours was brought up, and he stated he was in favor of it and that the men did not plan to work eight hours per day all of the time, and the plan varied back and forth between six and eight hours, as the ticket varies.

That is a daily ticket.

Q What happened after that?

A On the 17th, they requested permission to vote on the six-hour day, the Industrial Assembly, and requested permission to vote on the six hour day,, and on October 21, Mr. Susser vetoed the Joint Bill No. 1, which I read to you in full.

MR. CARMODY: Does the management have power to veto the acts of this so-called Congress, or Industrial Assembly?

A Yes.

BY MR. WIRIN:

Q With respect to the functioning of the A. F. of

L., do you know whether the management has the right to veto any action taken by any of the local lodges? I mean veto in the formal sense, other than a refusal to comply?

A I can't answer that question. I doubt it.

Q All right.

A On October 24th, the Election Committee, to which the question of securing a vote was referred, the proper committee of the Industrial Assembly, was requested to get an immediate answer to the vote, and they conferred with President Litchfield, and he stated that he would explain the company's stand, to go into effect on October 25th.

The joint bill on the 24th was passed over the veto, and that required a two-thirds vote or greater, and they appealed to the Board of Directors on October 28th. That was three appeals in sixteen years they have made.

BY MR. CARMODY:

Q The Board of Directors of the Company?

A Yes; and the veto was sustained by the Board of Directors of the Company; on the 29th, Slusser appeared before the joint session again to explain the situation, and on the 29th the factory-wide vote was taken requested by the Industrial Assembly.

On the 30th, the report on the vote conference was submitted by the Election Committee, but the company felt that they could not allow them the righ to vote.

I can give you more details any time that you want on that matter.

BY MR. WIRIN:

Q May I interrupt and ask you whether or not the A. F. of L. unions were also requesting that the matter be submitted to a vote of the employees?

A They did not. I will give you there procedure, if I may, later.

THE WITNESS: On the 31st, the House took action

relative to appeal to the Department of Labor at Washington by vote of 14 to 11.

MR. CARMODY: Those are representatives.

MR. SMITH: That is a procedure provided for in the plan?

THE WITNESS: That was entirely new.

MR. WIRIN: That was with reference to the provision of the agreement, that provided that in the event any of the aggrieved parties wanted a fact-finding commission, there might be one appointed by the Secretary.

THE WITNESS: They were not a party for that.

MR. CARMODY: It is something that somebody thought might be done, and the management, even the Board of Directors of the Company, had turned them down, and they turned then to the Department of Labor, out of a clear sky, and without any provision in their regulations for it?

THE WITNESS: On the same date the senate took action and the vote was 9 to 9, with the president of the senate casting the deciding vote against the appeal on the ground that he believed that they could make a settlement there, at that time.

On November 12th, still before the appointment of the fact-finding board, the Industrial Assembly received a report from their investigating committee, on their hours in Plant 2, which they had continued to insist on the lower hours.

The major demands of the Industrial Assembly, I can give you in two sentences: Adoption of the six-hour working day as standard policy in all divisions of the Goodyear Akron plants; and secondly, no reduction in wages.

Those were the demands they stated to our Board.

BY MR. WIRIN:

Q Are you through with that particular matter? What were the A. F. of L. unions doing at about the same time, and what were their demands?

A Under date of October 25th, they wrote the Secretary of Labor, and I will summarize this, if I may, relative to the proposed change in hours, and the reduction in wages which they thought would follow, and the reduction of the number of employees, and they reported that they had protested against this program without success:

> "We have tried to bargain with the management on this proposition but the only answer we have been able to get is an outright refusal to consider the proposition."

On September 11th, they had a conference with Mr. Slusser, and entered a protest on behalf of those they represented and asked that the six hour day be retained.

Q At that time had the company already announced—

A It was all rumor up to November 25th. Our committee called on Mr. Slusser, on the 25th, and he refused to discuss the matter with us, and saying that we would find their answer in the Wingfoot Clan, that is the company house organ.

They asked in this report for the appointment of a fact-finding board.

Q Some time in March, did you return to Akron?

I am jumping ahead now, and I will come back in a moment.

A On March 17th, the Secretary of Labor telephoned me in Columbus, and asked me if I would again perform a service, and to go to Akron, and confer, particularly with the company officials.

Q At that time, was a strike in full force?

A The strike was in full force, and negotiations had been under way the previous week, but had not been continued that week. It was a very hazardous situation, she felt, and I proceeded at once to Akron and joined the two Federal mediators who were there, and I was to go without any information being given to the president, nor did I make the best contacts.

Q After you arrived, did you learn whether there had been sporadic, or spontaneous, or so-called sit-down strikes?

A There had been a number of sit-down strikes, some in other plants in Akron, and several in the Goodyear plant.

Q Will you describe what a sit-down strike looks like?

A It is one of the most aggravating forms of strike, when the workers sit down by their machines. It is very effective picketing.

Q Do they work?

A Not at all. The machines are all ready to go, but the worker is not there.

I may add that some of my neighbors asked me to describe a sit-down strike, and I said, "Well, if you came home from work and found food on the stove, and the wife sitting by the stove, and the gas not lighted, you would understand what a sit-down strike is," and then the question was asked,

"Why do they let the next shift in?" and well, of course, they don't know whether the next shift is going to sit down or not, and if they don't let them in, it would be a lockout, so it is a very telling method.

Q These sit down strikes, were they called formally by the heads of any union or were they more or less spontaneous?

A The sit-down strikes were spontaneous, at least the earlier ones, and on February 3rd I understand there was a sit-down strike of Goodyear workers, against what they felt was a reduction in pay.

It was probably due to an adjustment of piece-rate prices. That was spontaneous, and there was no one back of that, the Industrial Assembly, or the United Rubber Workers.

On February 14th, on what they know is the fourth shift in Plant 2, where the longer hours had been in effect, there was a sit-down strike, and they charged

that 70 tire workers who had received a lay-off notice, against the lay-off notice which 70 workers had received.

MR. CARMODY: In other words, the longer hours had been put in effect in that department, but the men hadn't yet been laid off who would lose their jobs as a result of lengthening the hours, but they had been notified that they wouldn't be needed.

THE WITNESS: It is just a little bit different. With the let-down in tire demand, due to the earlier automobile season put on last fall, there had been a reduction in demand, and the company said that they were letting off the men.

MR. CARMODY: But that came at a time when they were letting the men go, and they couldn't provide six hours' work, and it was against that that these men sat down?

THE WITNESS: And these sit-down strikers left the plant.

On February 15th, there was another group sat down, and they were given 30 minutes to return to work; 137 of them were fired, and some went back to work, and then the Industrial Assembly appeared and secured the reinstatement of these men within a day or two.

MR. CARMODY: Of the 137?

THE WITNESS: Yes.

BY MR. WIRIN:

Q Are you through with that?

A On February 17th, the tire workers in Plant 2 decided to picket—shall I lead up to the strike?

Q Yes.

A On the 19th there was a sit-down strike in Plant 1, and then the pickets surrounded the main plant.

About the 22d to the 24th, the United Rubber Workers of America officially sanctioned the strike, and before that it had been a spontaneous strike.

Q In other words, the strike was actually in effect some time prior to its endorsement or approval by the union.

A It was.

Q Now, this spontaneous action on the part of the workers that you described, was that occasioned by the general ferment of unrest with which you dealt in your report to the Secretary, because of the action of the Goodyear Company, in announcing this change in ours, without conference?

A While there may have been an immediate cause, I think it is a fair inference that it was a part of the general unrest.

MR. SMITH: May I ask a question at that point?

Did you encounter among the members of the A. F. of L. union any considerable evidence of unrest due to the fact that there was this discrimination, this discriminatory action, between the Industrial Assembly and the union, on the part of the company?

THE WITNESS: Yes, sir.

MR. SMITH: That was discussed with you as an element in the general disturbance of the workers' feelings?

THE WITNESS: Yes, sir.

BY MR. WIRIN:

Q Now, I wonder if you will give the Board a general description of the situation when you arrived in Akron, or perhaps I will ask you some questions and you can give it as I ask these questions:

How many workers were on strike?

A The plant was completely shut down, and several hundred were shut in the plant, and had been there since the time the strike began.

Q What were the number of employees?

A Approximately 14,000 employees were out of work.

Q You say that the entire plant was shut down.

Do you know whether or not the rubber that goes into the rubber tires, comes from anywhere in the United States, or what part of the world it does come from, in a general way?

A A great deal of it comes from their plantations abroad.

Q And do you know whether or not the manufactured tires are sold throughout the country quite generally?

A They appear to be, from the advertisements.

Q You read the Saturday Evening Post?

A Yes.

Q Now, what happened to the movement of raw rubber into the plant, and the movement of manufactured tires out of the plant, during the course of the strike?

A I understand that for a part of the time, at any rate, there was lack of movement of supplies in, and there was a request, on February 19th, the police chief asked permission of the union for coal trains to enter the plant.

Q And was that granted?

A They agreed on the condition that no further work on production would be carried on in the plant, during the strike, and there were about one thousand men in the plant at that time.

The management would not agree to that, and the blockade went on for a time.

Q So far as you know, from your investigation, there was no movement in or out during that period?

A I understand that later there was some movement in and out, but this was given me at the time I was in Akron, the last days of the strike.

BY MR. CARMODY:

Q Coal is necessary in the creation of processing steam, for processing tires?

A They were particularly anxious to protect their stock with heat.

Q Then stock deteriorates rapidly unless it is kept at an even temperature, and that is above the outside temperature at that time.

A It was very cold at that time.

BY MR. WIRIN:

Q Was there any picketing going on in the course of the strike? After the sit-down strike developed into a conventional one?

A Yes, there was mass picketing to start with, and of course the plant is very large and it was often referred to as the eleven-mile picket line. On February 26, six Common Pleas Judges enjoined mass picketing, and also held that they could not legally prevent workers from entering the plant and they set up picket positions at forty-four gates, and limited the number of pickets to ten at each gate.

Q That is what the orders of the Common Pleas Judges said?

A Yes.

Q What effect did that have on the length and extent of the picket lines? Did it have any substantial effect?

A Yes, it did. The sheriff undertook to carry out the orders of the Court, and the Police did not work with him when it came to the final mass attack on the strikers.

BY MR. CARMODY:

Q You mean the City Police?

A Yes, but after the attack, or the proposed attack was called off, the United Rubber Workers of America, their leaders, put the plan of ten pickets per gate into effect of their own accord.

Q Now, was there a threat of a general strike during the course of the strike?

A There was.

Q What are the facts about that?

A I can't give you the exact date but the Central Labor Union set up a Committee of twenty-five to call a general strike, throughout the area there, in the event that an attempt was made to break the picket line at the Goodyear Company.

Q Was the picket line ever broken?

A No.

Q Just one or two questions more. Were so called Vigilante Committees organized during the height of the strike?

A There was a law and order league organized, which claimed about forty thousand members.

Q And did they take to the air, the radio?

A Yes, the leader did speak over the radio.

Q In a general way, what was their program of action?

A As far as could be determined, it was to create sentiment back of the non-strikers, and there was a group of non-strikers.

Q Now ultimately was the strike settled?

A The strike was settled on March 21.

Q And as one of the issues in the settlement of the strike was the question of the re-hiring, or re-employment of those who had been on strike without discrimination involved?

A It was.

Q And how was that finally determined?

A "All employees of February 12, 1936, shall return without discrimination or interruption of service record." That was in the agreement.

Q What was the agreement in so far, or the settlement in so far as the problem of the six or eight hour day involved?

A The Company will observe in the tire and tube division a thirty-six hour week, six hour daily shifts. Before any change is made in these hours, either per week or per day, below thirty hours per week, it will be arranged for by vote of the employees in the department or division effected.

Q That is substantially as the employees requested or wanted prior to the strike.

A Yes, except many, of course, like the five-day week.

BY MR. SMITH:

Q I would like to ask a question. Does this agreement that settled the strike, re-define in any way the bargaining relationships between the company, and these two groups, the Industrial Assembly, or are those continuing as in the past.

A They continue practically as in the agreement of April 13, of last year.

Q So that the same opportunity for favoritism which the company, according to your testimony, had previously exerted, still exists, as far as the agreement goes.

A As far as the settlement goes, but there is assurance on the part of the management, all along the line, that there will be no discrimination.

Q They gave the same type of assurance last year, as I recall it, also, to the Secretary, and perhaps not in the same degree but that there should be no discrimination, and that was part of the understanding of the April settlement, was that not so?

A Yes.

BY MR. WIRIN:

Q Now as a result of your experience which you have indicated to the Board, state whether or not the recognition of the principle of collective bargaining and the application of the principal of collective bargaining tends to eliminate certain industrial unrest, and certain strikes.

A It tends to bring about a better understanding of the problems of the worker, on the part of management, and of management on the part of the workers, and thereby it does help to eliminate strikes.

Q Now, state whether or not in your experience, discharging by employers—and I am not now referring to your experience in the rubber industry, or in any particular industry, but your experience with industry

in general—now the question is, state whether or not your experience has shown you that when an employer discharges workers because of their union activities, that that frequently leads to unrest among employees, and to strikes.

A Either that or any other method of discrimination, against employees, of course leads to unrest.

Q What is your experience as to whether or not efforts by employers, where those efforts take place, and for the purpose of this question the frequency of these efforts isn't at issue, but what is your experience as to whether efforts by employers in any manner to interfere with employees in their right to union organization, causes unrest among the employees, and sometimes strikes?

A It does, yes, sir.

Q Will you please describe the attitude among the citizens of Akron in general, first during the course of the strike, and their attitude and state of mind and effect upon the community, during the strike, and then after the settlement of the strike?

A The strike which involved fourteen thousand employees for a considerable period of time, and also held out the threat of extension to a number of thousand of additional employees, was seriously affecting the City.

BY MR. CARMODY:

Q You mean in other plants?

A Yes, it seriously affected the City, and I have never seen, except at the time of the Armistice, as quick a change come in a locality as came in Akron following the announcement of the vote of the United Rubber Workers of America, at their meeting on the 21st. That is, it was just in the atmosphere, and the hotel lobby, and then I got out on the streets, it was smiles, everywhere.

BY MR. WIRIN:

Q You mean a feeling of relief that this industrial war was terminated?

A Yes.

MR. WIRIN: We have no more witnesses for the afternoon, and I wonder if we might adjourn until tomorrow at ten, and we will try to conclude tomorrow definitely.

CHAIRMAN MADDEN: We will adjourn until ten o'clock tomorrow.

(Whereupon, at five o'clock, the hearing adjourned until ten o'clock on the following morning.)

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Washington, D. C.

In the Matter of Wheeling Steel Corporation and N.R.A. Lodge No. 155, Goodwill Lodge, No. 157, Rod & Wire Lodge No. 158, Golden Rule Lodge, No. 161, and Service Lodge No. 163 of the Amalgamated Association of Iron, Steel and Tin Workers of North America	Case No. C-3
In the Matter of Jones & Laughlin Steel Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Local 200	Case No. C-57
In the Matter of Crucible Steel Company of America, Spaulding and Jennings Works and Strip Steel and Wire Workers Union, Local No. 20084, A. F. of L.	Case No. C-67 II-R-4

406 Denrike Building,
1010 Vermont Avenue, N. W.,
Washington, D. C.
Tuesday, April 7, 1936.

The above-entitled matters came on for hearing, pursuant to adjournment, at 5 o'clock p. m.

BEFORE:

J. WARREN MADDEN, Chairman;
JOHN M. CARMODY, and
EDWIN S. SMITH, Members of the Board.

APPEARANCES:

ROBERT P. WATTS
THOMAS I. EMERSON
A. L. WIRIN
Appearing for the National Labor Relations Board.

EDMUND M. TOLAND
Attorney for the General Council and Departmental Councils of Wheeling Steel Corporation.

Tuesday morning HBA.

PROCEEDINGS

(The Hearing was convened at ten o'clock.)

CHAIRMAN MADDEN: The hearing will come to order.

Whereupon

FERDINAND A. SILCOX

was produced as a witness for and on behalf of the National Labor Relations Board, and having been duly sworn by the Chairman of the Board, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WIRIN:

Q Your full name is Ferdinand A. Silcox

A. Yes.

Q And what is your present occupation, Mr. Silcox?

A Chief of the United States Forestry Service.

Q How long have you held that position?

A Since November of 1933.

Q Have you, in the course of years, interested yourself in the problems of labor relations, and relations of labor to industry?

A Yes, sir.

Q Does your experience go back to some experiences you had in 1917?

A Yes, my first experience was in 1917, with about eight thousand fire fighters in Northern Idaho and Western Montana.

Q What was the nature of your experience of your contact with the problems of labor at that time?

A We had a territory out in the forestry service including Montana and Northern Idaho of twenty-five million acres of publicly owned land.

Q And you were at that time in the Forestry Service?

A. Yes.

Q What position did you have?

A I was District Forester in Montana.

Q Tell us what your experience was.

A We have in that territory of Northern Idaho, a pretty severe fire hazard, mostly white pine, and normally unless we get our rains in May and June, we get a terrific hazard, and we have employed as high as eight or ten thousand men in fighting forest fires.

There had been an under-current of revolt in that whole logging region for ten or twelve years, and attempts had been made by the various groups to organize the lumberjacks, with a considerable amount of fighting on both sides.

The American Federation of Labor attempted it, and there was such bitter opposition against it that the organization was dissipated. A substitute organization came into effect in the form of the I.W.W., the industrial type of organization.

CHAIRMAN MADDEN: When you spoke of such opposition to the Federation's attempt, that was employer opposition?

THE WITNESS: Yes.

BY MR. WIRIN:

Q Was the employer opposition organized?

A It was the usual type of opposition, they had agent provacateurs, and they would break up the meetings and used the general tactics to prevent organization, and the direct purpose was to prevent the American Federation of Labor organizing the workers in the woods.

Q Did the employers organization have a group organization?

A Yes, they had a lumbermen's employers association, with headquarters in Spokane, Washington.

Q And substantially all or a substantial majority of the employers were members of that?

A Yes, the employers, and the controlling groups were members.

CHAIRMAN MADDEN: Were these agents that you spoke of that broke up the meetings, were they secret agents, that is purporting to be members of the union?

THE WITNESS: Yes, they used those tactics to get into the meetings, and then break them up.

MR. SMITH: Was that organization the West Coast Lumber-Manufacturers Association?

THE WITNESS: That is further on, that is on the Pacific Coast. I don't know that I can give specifically its name, but it included, or it was called the Western Pine Manufacturers Association, of the Northern pine region and Western Montana.

BY MR. WIRIN:

Q Did these employers form a single policy or a single labor policy with respect to labor?

A I should say that there was nothing but a lack of labor policy.

Q This policy of opposition, which you are describing, was that the policy upon which all of the employers concurred?

Q And now what other tactics were used by the employer's association, if you remember?

A Well, of course the general scheme of handling the camps was that if a complaint was made on the part of one of the individual workers, he said that he didn't like the conditions, he was told that he could get out of the camp.

There was nothing in the form of constructive labor tactics, and there were a lot of opposition tactics to prevent the organization of the workers.

Q Now, the secret employees of the employers, who were members of the union and whom you described as provacateurs, did they report the activities of union employees or union members to the Association or to any clearing house?

A I can't testify correctly on that, but that is from direct evidence, but I am perfectly sure that they did, but there was no way that I can testify, and I have no evidence stating the names of the agents or who they were.

But the net result was that wherever an effort was made to hold a meeting under the auspices of the American Federation of Labor at that time, they were interested in organizing that field, there were tactics used to make those meetings break up, and the effort of the employers was successful in preventing any kind of craft union being set up under the auspices of the A. F. of L.

Q Do you know whether what is commonly called the blacklist was used by the employers?

A Well, a great many of those things are not made public. They are common knowledge at the time, and not only through the employment offices were the blacklists used, but whenever they had an agitator they would scratch him off the list, but all of that material is kept undercover, and you can't get at it.

You see the reflexes of it all through the activities, but you can't put your finger on it.

Q When you say reflexes, you mean those that were active were discharged, or disposed of so that they were no longer employed?

A. Yes.

Q Now, you say that there was a rumor about it. Did the workers have the feeling that these practices were going on, and did they know about these practices by the employers?

A Yes.

Q What was the reaction of the workers to these practices?

A The reaction was to organize the industrial type of union, the I.W.W., and you got a revolt organization, which was gradually in process of formation, culminating in a strike in 1917, and all of these fellows walked out and sat on the river bank.

Q Do I understand your testimony to be that as a result of the unrest among the workers which these practices by the employers had caused, this strike resulted?

A That, plus the conditions in the camps.

Q You mentioned, or you stated that the I.W.W. was a revolt organization or an organization of revolt. Won't you tell us just briefly what its purposes were, and what the full name of the organization was.

A The Industrial Workers of the World, and they gained a footing and following in that whole Northwestern Idaho and Northern Montana country, and in 1917, or the spring of 1917, we were faced with a pretty hazardous fire season, and just before the fire season

broke out these men walked out of all of the logging camps and sat on the river bank and let the water go down while the logs stayed in the hills.

The lumberman's organization got in touch with the Forestry Service, and requested us to cooperate with them in preventing forest fires. I asked specifically what they wanted in the way of cooperation, and they specified two things in writing, and the letters are on file.

One was that we employ all of our men through their office, and that we post notices on their timber property to prevent what they felt was a danger to their timber—that the I.W.W. would set it on fire.

CHAIRMAN MADDEN: What would have been the effect of the government posting those notices—would it have made it a Federal offense?

The Witness: The government would have played into the situation of being parties to a deliberate deception, because there was no Federal authority to post notices on anything but Federally owned land.

BY WIRIN:

Q Would it have given the impression to the workers that the government would be backing the program of the employers?

A Unquestionably.

Q What happened then?

A I went over and went to Spokane, and I told them that I wouldn't cooperate along that line, first because their employment offices could not handle our complete labor supply, and for the second reason that I wasn't going to fool myself that by merely questioning people in these offices, and tearing up a red card, that they ceased to be members of the I.W.W. I knew that they were members and I was going to deal directly with them.

On the second issue, that of posting notices on private timber, I told them that I was somewhat surprised that I was a government agent, and I was surprised

that they expected me as a government agent to become a party to a deliberate deception, and they were doing the very thing that the I.W.W. charged them with.

They backed off the second proposal, and we went ahead and established our own Federal Employment Office. I had submitted to this lumber group seven years before a contract which was about the size of a postal card, which was a system of premiums and penalties, and the first paragraph included the conditions of work on the fire, and the rate of wages and the conditions of work.

The third paragraph included the conditions going from the fire, and we paid transportation back from the fire, provided they stayed and put it out.

This contract was not accepted by the lumber group in North Idaho, and Montana, and I went in 1917 to deal directly with the I.W.W. I went down to their headquarters and submitted this contract to their leaders, and asked them to talk it over with the men in the camps, and if there was anything that they wanted to take issue with to come up to my office, and I would go over it and see if we could arrive at a mutual and satisfactory arrangement.

Q Did you deal with the leaders?

A I dealt with the two leaders, one of them in Montana, and the other at Spokane.

Q Were they the officials?

A They were then the officials, one chap by the name of Arthur Smith, at Missoula, and a chap by the name of Don Sheridon, who was the leader at Spokane.

These contracts were discussed with the men in the camps, and by their own leaders, and then I invited the I.W.W. leaders to come up to my office to go over the contract in some detail to see if we could arrive at an additionally mutually satisfactory condition.

They accepted the contract, and agreed to work under those conditions. After I found that I couldn't get any mutual arrangement with the lumber group of

North Idaho to deal with this revolt crowd, I faced the alternative on the one hand of either dealing with the usual processes of repression or attempted repression, and I knew perfectly well and I didn't fool myself that they could beat beat me at my own game—or else to evolve a certain self-discipline within the group to take care of the problems themselves.

I was warned that I was laying the foundation for a certain amount of trouble, and I like to cast back to 1917, when we were just entering the World War and the psychology of the situation at that time, and what it meant to go down and deal directly with this type of revolt organization.

Q What were the avowed purposes, of the program of the Industrial Workers of the World, as distinguished from the so-called orthodox or trade union movements that are a part of the American Federation of Labor.

Q Well, I would say that that literature is available, and I have stacks of copies, and I still have large quantities of copies of the literature, and the essential difference between it or the orthodox type of union, was that it was an industrial type of union, and the second thing was that their avowed purpose was not to make contracts with the employers, but primarily to take over industry.

Q Was it a revolutionary union?

A Yes, In theory, yes, in practice more or less of a revolt type of organization. I don't think that it ever reached the revolutionary stage. They were revolting against, primarily, the conditions of wages, and there was no basis for liquidation of complaints.

Q When you say "revolt," do you mean a spontaneous and militant opposition to conditions or working conditions?

A Yes.

Q All right, now you were telling us—

BY MR. CARMODY:

Q Included in conditions in the camp were sanitary conditions in the camp?

A Yes, I mean the A, B, C's of sanitation, and they didn't have fly screens on company cook shacks, and there would be stables within flying distance of the food, and the men complained, and things that you orinarily would think would be taken care of without any complaining.

BY MR. WIRIN:

Q Was this spirit of revolt directed against what they considered the high-handed conduct of the employers and the discrimination by the employers against the leaders of the Union?

A Yes, if I can state this case. It expressed pretty clearly what happened:

When I went down to the I.W.W. headquarters in Missoula, this chap Arthur Smith was sitting behind an old roller type desk, and these fellows would come in and drop two bits in the cigar box, and say "For the cause."

When I got in behind the desk, they were naturally suspicious, and the I.W.W. leaders put me under a sort of category of suppression. He said to me, "How many of these fellows do you think are married?" And I said, "I don't know," I said, "Probably ten or fifteen percent." I have said about these men that these men are called "Woman-less, and vote-less, and work-less." There is a book on that subject by Carlis Parker.

I talked to Parker personally on the Longshoreman's strike. But what this man meant was that no foundations had been laid in any way by the industry to give any sense of security or stability, to these men to establish homes. And then he asked me directly if I thought the lumber industry had done anything to recognize this condition so that these men might have homes.

I told him, no, I thought that the industry had

treated them to saw-dust piles, rather than Geranium beds, and there you get the contrast.

Q May I ask, was there ever any conference between the workers and the employers, as to living conditions, or what was the attitude of the employers upon requests for conferences?

A I should say that it was just the reverse. They would have nothing to do whatsoever on any point of contact with the I.W.W. There was no channel open of any sort that I could find whereby the current complaints, even the minor type of current complaint could be liquidated through any channel.

Q In other words, the conditions of employment and the conditions of habitation, and all other conditions were determined by the employer without the consultation or conference with the employees.

A Entirely.

Q Was that a cause of resentment against or among the employees?

A It was one of the causes of the direct revolt. One thing that gave rise, or one specific instance that was an inflamatory instance that gave rise to this strike, was the fact that in a camp up in the Northern part, North of Sand Point, Idaho, one of the lumberjacks who happened to be married, his wife was sick, complained against the type of medical service he was getting, and he was fired for the complaint.

Now, the thing had gone this far, and it was a completely autocratic set-up.

Q Was that common practice for a person who complained about conditions to be fired?

A To use the expression, if you don't like the conditions in the camp, get the hell out of here. I am using that in the form in which it was used.

There were exceptions, of course, but that was the general attitude in the handling of the labor problem.

BY MR. SMITH:

Q Did the employers have the same attitude

toward the A. F. of L. organizations which preceded the I.W.W.?

A They are opposed to any type of organization in the lumber workers.

BY MR. WIRIN:

Q Will you state whether or not as a result of that experience and such other experiences, you have found that where conditions obtain as you described them, with respect to members of the I.W.W., that a militant or revolutionary union supplants a conservative or orthodox union.

A I think that if your channels are completely closed to an orderly handling of complaints, you get a suppression of emotions that ultimately explodes, whether you get it in the form of what we call a non-union plant, or lumberjacks in the woods, or it may come out of a union organization.

Ordinarily in a union organization, the channels are open somewhere where the complaints can be liquidated, but that situation that I am speaking about was a constant repression of the emotions, and a constant short-circuiting of any channels through which complaints could be orderly adjudicated.

Q When you say orderly handling, or the orderly adjudication of complaints, state whether or not for such orderly presentations it is necessary that the workers be represented in some way through representatives on the one hand, just as employers are represented on the other hand.

A I don't think that there would be any adjudication unless there is equal representation. I think it is essential, and fundamentally essential to any set up of machinery for the adjudication of complaints between the employer and the employee groups.

Q Now, what did you do, or what was the result of the disciplinary problem that you described?

A The result was that I had eight thousand men on the pay rolls at that time, and some of them were

one hundred and twenty-five miles from the base of supplies, and I had absolutely no trouble with them whatsoever.

I will give an illustration of the way this problem of self-discipline works. I sent a group of fifty men out to a fire from the Northern Pacific station, who had that station at Missoula, and there was one chap who loved to fight I don't know whether he had any particular issue, but the I.W.W. leader kicked him off the platform, and sent the other men out to the fire.

That is they assumed disciplinary control themselves, of the situation.

I had two hundred and fifty men up at the head of the Swaun River in Montana, and I got a call from a ranger over our long distance phone saying that there was mutiny in the camps and likely to be a killing, and asking for soldiers from Fort Missoula, or the United States Marshall, and I had one fellow with me from Tennessee, with some reasonable sense of justice, and had been at one time subsequently a member of the I.W.W. himself, and he was probably one of the most outstanding engineers of the United States, and I sent him in there, to see if he could settle that thing.

When he got into the camp, he found that the control of the place was as bad as any place, and that it couldn't be controlled by that process. This engineer that I sent in there was named James Gerard, and he asked what were the bases of the complaints, and they found two complaints, one was that their grub hadn't gotten in, and secondly their bedding hadn't gotten in, because of a breakdown of transportation to the particular area.

He took the ranger and put him off to wrangling horses to get him out of the picture because he was merely a disturbing factor, and we finally got the food and bedding in, and Gerard took this group of men around an open camp fire and said to them that, "You have certain obligations to us, and we have certain obli-

gations to you," and he read the contract which I had previously described, and he said to this group of men, "Now, select your own foremen and your own straw bosses," and they sat around the camp fire and assumed that responsibility.

And frankly, they did a better job than we could have done. This is a heterogeneous group of men of all nationalities, and most of them are migratory. Herard said in the morning I will lay out the fire line, and you fellows go ahead and build the fire line, and exercise control through your own foremen and straw bosses.

The result was that at day break, Gerard laid out the fire line, and these men built the fire line, and in the mean time we sent a pack-train to take care of them for lunch. But the men didn't show up until twenty minutes of three, and the cook was fuming around because the men hadn't got there for their lunch, and he asked them "Why"?, and they said that if they had the fire would have gotten away from them.

That was the same group of men that were staying in the woods an extra hour and a half, and putting the fire out before they came down to lunch. That was the result of this plan of having them assume their own disciplinary control.

BY MR. WIRIN:

Q Will you tell the Board what was the attitude or the attitude of some of the public, if not most of the public, to the I.W.W., at that time.

A The attitude was very bitter. These men were being thrown in jail, and they were doing soap box oratory, all over Spokane, and a good many of them by the time they got upon top of a soap box a cop would take them and throw them in the jug.

The newspapers were carrying large block headlines, telling of all of the high crimes and misdemeanors of this group, particularly as an anti-war group, and that was considerably accentuated by the fact that we were just then entering the World War.

But they were considered enemies of society, and dangerous people.

Q Did you find as a result of your experience that conferring with workers, and understanding their grievances was more helpful to getting work done than suppression and persecution?

A I would say that it was utterly impossible to have handled the situation with eight thousand men if you attempted to exercise a disciplinary control yourself. That by putting the entire disciplinary control on the men, they assumed the responsibility, and there was a very loosely organized group, made up of a hetrogeneous bunch of migratory workers who assumed the responsibility when it was put on them.

I went even farther than that, and when they had complaints in the camps, I went into the camps and said, "I know nothing of your complaint, you fellows take and set up your committee and try the case and give me the answer."

The net result of it was that they leaned backwards to be fair, and were much more severe in the handling of the case than I could possibly have been, because their attitude was that they wouldn't let any of these fellows put anything over.

But the experiences were definitely convincing to me that even under those circumstances, remote from the basis of control, packing their food to these men, and a hetrogeneous group of people with no background or traditions of organization, in a state of revolt, would respond to an opportunity to assume responsibility, and did.

I mean there is no question about that—it is a matter of record.

BY MR. CARMODY:

Q Are you acquainted with any more difficult, hazardous or fatiguing work than fighting forest fires?

A No, sir; there is nothing more dangerous. I had one hundred and fifty men burned to death in

Northern Idaho in 1910, and two hundred and fifty of them burned seriously.

Q It is much more difficult than the average employment of any employee.

A Yes, their lungs are filled with smoke, and the tops of trees are falling down, and if you get a high wind you are liable to be trapped.

BY MR. SMITH:

Q This self-discipline couldn't have exhibited itself if they hadn't had the committees or otherwise maintained some form of organization, to carry on this discipline, isn't that so?

A I think that is quite true. They had a form of organization, and they had their leaders and their sub-groups, scattered around, and for instance they would have a sub-group here and there, at these different centers around, and what virtually corresponds to your locals of unions, although it was very loosely hung together, but for all practical purposes it was a type of organization through which you could deal.

You could deal with the leader from Montana who was this chap Arthur Smith, and he had his lieutenants around, and you could deal with the one for the Western part of the Divide, and he was handling that section.

But if you got in touch with these two leaders you could reach the different sub-sections of this group of men.

BY MR. WIRIN:

Q To follow up Mr. Smith's question, would it have been practical and possible, realistically, to have secured the self-discipline that you described, if you attempted to deal with all of the men individually, and entered into individual agreements, with each individual and separate worker, as to his duties and responsibilities?

A Well, it would have been utterly impossible, and in the first place it would have been physically impossible to have contacted the men individually.

It would have been entirely out of the question to get over the idea of self-discipline except through their own leaders.

Q You don't think that individual bargaining under those circumstances would have saved the forests?

A No, I don't think that you could have handled the situation by individual bargaining.

Q Now, turning to another experience, were you in Seattle in connection with labor problems some time after that?

A Yes, I was in Seattle, for the Joint Commission for the Department of Labor and the United States Shipping Board.

Q Before you went to Seattle, were you connected with the United States Army?

A I had a commission of Captain in the engineers, in France of 1917.

Q Is that your present title, in the United States Army?

A I never got to the Army, and I merely got a commission.

Q What is your latest commission?

A I was Captain of the Engineers.

Q And were you ordered or requested by Secretary Wilson to proceed to Seattle?

A Yes, I got a request after the Commission came through, somebody took the story to Secretary Wilson, who was then Secretary of Labor, about this situation in Northwestern Montana, and I was then requested by the Secretary and Mr. Hurley, who was then head of the Shipping Board, to go to Seattle. I told them that I would go if they made a request for my release from the Army, which they did. I then went to Seattle.

Q What year was that?

A In 1918. I think that it was in the fall of 1918, or it was in the fall of 1917 and the early part of 1918.

Q What did you find there?

A The problem that they put up to me before

I left here was to deal with four of the big steel shipyards and that was the total number in Seattle at the time, all unionized and under closed shop agreements with the employers, and an attempt to work out a centralized control of the in and out flow of labor into these yards.

That is through central employment set-ups.

Secondly, to adjudicate certain types of disputes, that were dead-locked, and certain processes, and the ships were lying in Seattle Harbor, at the heighth of the submarine warfare, completely finished in all details except the turbine engines.

It was a problem to see whether or not we could get the processes going, and the coppersmiths to produce the pipes necessary to connect them up.

Then there were the caulkers in the wooden shipbuilding situation, that was another group that was dead-locked. And there was a shortage of riveters and machinists and so on, and in other words, evolved by using the employment bureau as a focal point, and the complete problem of dealing with the entire set-up, and the entire labor set-up in these four steel shipyards, and of providing ways and means for the adjudication of disputes.

When I arrived in Seattle, there were about four thousand men up against those shipyard gates, and they were standing there in the drizzling rain, and the problem first of all came to get those men under cover, and establish a central employment bureau whereby, by some sort of test, a mechanical test of some kind, of checking the men up by actually going on certain machines in the yard, with someone connected with that profession, to check up their abilities.

We had to evaluate the labor supply that was there and get them into the yards. I established this central employment bureau with the joint consent of the unions and the employers.

Q How many unions were involved, Mr. Silcox, or what were the unions?

A There was a whole range of metal trade unions. I think that there are some fifty odd different types of unions. You had the boiler-makers, and the boiler-maker helpers, and the machinists, and the coppersmiths, and the marine pipe-fitters, and the steam fitters, and the building trades pipe fitters, and steam pipe fitters, and all had separate organizations, and you had the carpenters, and the ship-fitters, and you can get a list, and I think that it is over fifty-seven varieties.

BY MR. SMITH:

Q Were they organized into a metal trades council?

A Yes, and they developed something there in Seattle which I think is quite significant. When these ship-yards were first underway, the unions and the employers, dealing on a regular union set-up basis, sat around the table and arranged all of the differentials between crafts, and jointly agreed on a blanket agreement, both the employers and the union, so that the whole question of the arrangement of the differentials between crafts was settled jointly, and that became effective for each one of the four yards so that you had a uniform type of agreement.

And it was a tremendous stabilizing influence in having a common uniform base for all four yards.

Q Were the unions a party to this agreement?

A They were all definitely a party. All of the local unions, and underwritten by the various international unions.

Q Were the employers organized in any kind of an Association?

A Yes, they had an association, I can't give you the exact name of it, it was the Seattle Ship Owners Association, or some sort of thing like that.

Q Did that represent substantially the majority of and the important shipbuilders?

A It represented all of the four big steel yards

there at the time. There was some contract shops that were doing specialized type of work like grey iron moulding or coppersmithing, that were supplementing the specialist shops of the ship-yards themselves, that were on the outside, but they were all union shops.

Q Was this agreement signed by the Association?

A It was signed by the individual members of the Association, there being only four of them. I mean only four of the big steel ship-yards, and there were some other contract shops, and most of them signed the agreement, too.

Q Did you find as a result of that experience that the situation in the ship-building industry during the War, at a critical time, was stabilized by virtue of the practice of collective bargaining?

A I think that unquestionably, every form of question that came up in the handling of those ship-yards—I will give some specific examples, where through a collective channel to deal, you could deal with certain problems, where without it you couldn't.

Take the coppersmith's smithing situation. I got to Seattle, and there was a stack of telegrams about a foot high, in connection with this coppersmith problem, which was then the specific problem that was giving the trouble.

The net evaluation of those telegrams was largely a question of calling each other names, and the union on the one side, and the employers on the other side, and that is about the net result so far as any constructive action was concerned. By checking in with the local coppersmith's union, which was made up of practically all Austrians, and there are only about two thousand coppersmiths in the United States at that time, and most of them were in Breweries, and they are very craft-conscious, and were very self-protecting in making sure that their wages weren't brought down through dilution.

BY MR. SMITH:

Q You mean the introduction of un-skilled workers, to practice in the craft?

A Yes.

It was obvious that the ship-yards had to go through their estimating departments to determine how many coppersmiths man-days would be necessary to produce the amount of piping, and connect up the standard eighty-eight hundred ton fabricated ships that were being manufactured in these ship-yards.

I suggested to the President of the Union that he join with a representative I got from the University of Washington, a young mechanical engineer, who pulled the figures together, to make certain check-ins, and that they would visit each estimating department, of each one of the ship-yards, and there determine how many actual coppersmith man-days it was necessary to turn out these ships under the program then established by the shipping board.

That data was checked, that information was checked in the estimating departments of the ship-yards, and then with the contract shops, and out of that we got a fairly close estimate of how many actual applied man-days we needed to complete this program.

The union, when the matter was presented to them, recognized the factual analysis that they could not with the total number of skilled coppersmiths turn out the work, and it became fundamentally necessary to work out a plan of dillution.

I went to the coppersmith's shop, and I knew nothing about coppersmithing, but I could point out that I could do that, and that, and that, and I couldn't do this, and I am beginning to get skilled when I do this, and I roughly designed my zone of dillution by that process.

Then I got the President of the Union, and rewrote a section of the contract to provide for dillution which would protect the wage scale of the skilled me-

chanic, and give them control through a system of permits of the men who were employed for their helpers, that is for the dillution.

The union accepted this after it had been presented by the President of the Union himself who had been taken in full confidence in the estimates that were arrived at, through these contacts with the shipyards. The union accepted that, and in fact I mentioned that because they were more generous than I had expected them to be, and the coppersmith problem which had been deadlocked for six months immediately found solution, and the ships began to be built, and we got over that problem.

We applied the same method exactly with the caulkers, and we got the total feet of caulking to be done, and worked out a man-day factor.

BY MR. WIRIN:

Q Did the unions cooperate in doing that?

A Yes.

Q Did you feel that this cooperation by the union was necessary in order to arrive at an adjustment of the problem?

A Well, I know what my difficulties would have been had I tried to arrive at it without a really competent organization in the form of the union, being able to work through their own channels.

Q Now, moving on, Mr. Silcox, thereafter did you become connected with the printing industry, as a Director of Industrial Relations?

A Yes, I was asked to come into the printing industry in April of 1919, and become Director of Industrial Relations, for the commercial branch of the printing industry, of the United States and Canada.

Q By whom were you asked to become a Director?

A I was asked by the employers, the United Typothetae of America, and that was then the International Association of Master Printers.

Q And what were your duties as Director of Industrial Relations?

A My duties at that time was to analyze the entire labor problem of the commercial branch of the printing industry, both union and non-union or all of the intermediate steps of open shop.

I came with them in post-war years, when the labor problem was quite an important one, and there were questions of reduction of hours, and increasing wages, and changes in shop practice, and overtime questions, and so on, that were coming up almost daily. That was in all parts of the country.

Q Will you describe the general nature of the employer's association and its functions?

A Well, the printers have even in pre-revolutionary times had some plans of organization. Printing, as I have described it, is one of the industries born in the scholarly atmosphere of religion and the classics, and it has a background of tradition that extends down from the time of Guttenberg, and still is reflected in the industry much like the metal trades.

There is a higher quality of education in the printing industry, and it ranks next to the profession and clerical classes for native born, English speaking people.

Q Are the printers organized in guilds, in that period, in the latter part of the Middle Ages?

A You will find back when they first established printing in the shadow of Westminster Abbey, there was historically, they had an organization instead of the printing plant called the chapel, and that still comes down to the American industry, where the composing room was called the composing room chapel, and so on.

In the English origin of printing, of movable type, they called them the chapel fathers, and I discovered in one of the early printing plants there was a very simple devise for settling disputes whereby the men

put a shilling on a stone, and then the chapel went into session and tried the case, and if the case had merit to it, and the man won, they would give him back his shilling, and if on the other hand the case did not have merit, why the chapel would absorb the shilling, which was a very simple devise to prevent too many complaints which were trivial.

Q Was that before or after the days of trial by ordeal? (Laughter)

A That was about the time of Guttenberg.

Q In any event, trade unionism in the printing industry is old and has a long tradition?

A It goes back a long, long ways, to pre-revolutionary days, and the full history of the entire organizations of the printing was done in a Ph. D degree thesis at Columbia University, and used all of the material that I had, and that is in published form.

Q Who is the author of that publication, do you know?

A It is a girl, I don't know her name.

BY MR. CARMODY:

Q It wasn't Miss Baker?

A She did the work of displacement, technological displacement, but this girl was connected with the English Department, and then there is a long history, rather accurately and well done on the history of the typographical union, published in volume form. That is available.

BY MR. WIRIN:

Q In what era generally did the typographical union become articulate in this country, in the form of a definite trade union?

A 1850, or around that time.

Q Did Horace Greely have any dealings with that?

A He was the first President of Typographical Union No. 6, and he wrote their constitution and by-laws. There is a statue of him in New York, on Thirty-third street.

Q What is the present membership of the Typographical Union?

A Approximately ten thousand.

Q Do you know the membership of the International?

A The last figures that I saw were around seventy-five thousand, and I imagine around seventy to seventy-five thousand.

Q When was the employers association organized?

A In 1887.

Q And was the organization set up for the purpose of dealing in part with the unions?

A I should say historically that the employers organization came into effect to set up a counter balance to the union, and it was originally organized on a definitely anti-union basis.

Q Now, was it changed?

A Subsequently as time developed, the employers split into two groups within their major organization, and evolved a plan by which they would have their cost-finding and all of that sort of work underwritten by both the open-shop and the closed shop groups, and then they established two separate bodies within their major organization, one called the closed shop group, and the other called the open shop group, and on labor questions these two groups voted separately through their own channels, so that they took the opposing views within the Association, and kept them separate as to labor.

Q Can you tell us whether the group called the open shop was an anti-union group and refused to deal with labor unions?

A Well, you had every variation, from those that would deal with the union, and those that woudn't frankly say so, up to those that were definitely anti-union, and used every device to keep them out of their plants.

Q Now, have there been for some years collective agreements between the employers association on the one hand and the union on the other, in the job printing industry?

A Yes, pretty well over the country.

Q How old are these agreements, or when did they begin to come into existence?

A They began to come into existence shortly after the formation of the International. When the International Typographical Union was organized in 1850, they included the pressmen and the electrotypers and book-binders, and subsequently each one of these groups split off, so now you have five international unions in the general printing trade.

I should say all through that period, in more or less varying form, you had collective bargaining agreements, and the compositors, largely because they are a higher standard of education—the literature of the world passes through their hands and heads, in setting type and so on—were the leaders in the group, and had contracts worked out in considerable detail before the other groups.

But as time went on they have had collective agreements or collective contracts not only as to wages but as to working hours. And I should say that probably one of the most detailed forms of collective contract agreements in existence is the typographical union collective contract with the printers league of New York.

Q What is the printers league.

A That is a closed shop division of the employing printers.

Q Representing how many employers?

A In New York they represent about, I should say, about three hundred employers, and represent pretty nearly seventy-five per cent of the production.

BY MR. CARMODY:

Q Is New York one of the largest printing centers of the world?

A They do about twenty-five per cent of the total volume of printing of the United States, and at one time an estimated one-twelfth of the entire printing of the world.

Q And what percentage of the workers are employed by these members of the League? I mean approximately how many?

A We estimated—well, I have to separate that question. In the direct contracts, I mean where the individual plants were tied into the printers league by an individual contract signed by the plant, committing itself to the League, and authorizing the League to make a contract for that individual plant with the Union, a list of which was furnished to the Union, certified copies, I should say that there were about twenty thousand people involved by the direct contract.

We also figured that the standards set up in those contracts, affected close to sixty thousand people. A good many followed the contract without signing it.

Q Thank you.

BY MR. WIRIN:

Q Do these contracts provide that during the term of the agreement, there shall be no strikes or lock-outs?

A Yes.

Q And what has been the experience, or do they also provide for impartial machinery to adjust disputes?

A. Yes.

Q And has such impartial machinery been set up in the industry?

A. Yes.

Q How long has that impartial machinery functioned?

A It has been functioning more or less, I should say that it functioned in more perfected form about 1906, after the eight-hour day strike.

Q Have there been any examples of violations on the part of the unions of the provisions of the contract

to prohibit strikes, or have there been any strikes in violation of the contracts?

A There have been on some individual cases. In the Typographical Union No. 6, for example, over a close to fifty year period, they have never violated a contract, and in addition they have a rather high pride in it. They never violated it after they have entered into a mutual submission agreement, to submit a case to arbitration, and they have accepted the results of arbitration without any question.

Q And have they accepted the adjudications of the impartial machinery?

A Yes.

Q Both sides?

A Yes, there is quite elaborate machinery set up. You have in those contracts what we call the Supreme Court of the industry, and what is a joint committee of five each from the employers and from the individual union, and that is there would be five members of the typographical union and five members of the employers, and then the industry doesn't function on hiring a permanent arbitrator. In considerably over ninety-five per cent of the cases they were settled without going to an outside arbitrator, but they reserve the right, that where necessary they would get an outside arbitrator to settle that case and dismiss him when they get through, and keep the adjudication within the industry itself.

Q Let me ask you whether or not in your opinion in that machinery for the adjustment of disputes, which you have described, it would be possible or practical in the absence of collective bargaining?

A No. It is based fundamentally on collective bargaining.

Q Would it be possible where employees dealt individually with the employer with respect to the wage agreement, and the other agreements.

A No, I think that if you are going to have any

orderly set up on the matter of adjudication of complaints, it must be based fundamentally on the right of representation, that is the employee group must have an organization that is truly representative themselves, and the right to select their own mn, and the same is correspondingly true of the employers.

Q Let me ask you further if this machinery could function if employers attempted to coerce employees in their own organization activities.

A No, I think that the thing would have to be based upon a pretty sound mutual understanding of common problems. I mean, if you attempted to use discipline of that sort, based upon coercion, I think that in the net results there would be friction, and difficulties and eventually a clash.

Q Now, do the agreements between employers and employees provide for any apprenticeship training, and a school of some kind?

A I would like to point out that aside from the adjudication of complaints and friction, that there is a field of opportunity where you have responsible organizations on both sides, to deal with some of the major problems of the industry like the education of apprentices.

Q Is that an important problem in the printing industry?

A Very definitely, and it takes you five years to train a first-class compositor, and something like seven years on a four color pressman.

Q And is it to the advantage of the employer to get well-educated workers?

A It is both to the employer and the union.

Q What is the program or the plan in use?

A Well, the program in New York now goes back about eighteen years. There was a small compositor school started by the Hudson Guild, down in a cellar, on Fifty-Sixth Street.

Q The Hudson Guild was one of these organizations?

A No, that was just a charitable organization, and Dr. Elliott, was taking some way-ward boys off the street, and he got them down in the cellar, and got some type and got them busy, and the thing began to grow, and Dr. Elliott came to the employers organization and the union, and said, "Here is a chance for training the boys for the industry."

They formed a Board of the employing printers, dealing with the unions, and the Typographical Union, and out of that evolved a contribution by the Typographical Union of ten thousand dollars a year, and a contribution from the boys on the basis of so much per week, which contributed about eleven thousand dollars a year.

The school was taken over under the joint auspices of the unions and the employers, including the commercial branch, and the newspapers. Out of that was evolved a compulsory system of education whereby the boys were sent to school a half an afternoon each week on their own time, and an evening on their own time, and the school was modernized, and complete in detail, with a corps of instructors, and they went so far that the union and the employers jointly agreed on making intelligence tests on boys before they could get their apprenticeships there.

The old apprenticeship system had broken down completely under modern mechanization, and the union was having difficulty in furnishing competent men and having men shunted around from one plant to another to get their training, and the employers were carrying the burden in one form or another.

By the establishment of this school, and an orderly system of introduction of apprentices worked out, we were able first to select the material, both as to physical and health examinations, and mental examinations, and to secure a quality of boy of exercising joint disciplinary controls both over the employer, the union and the boy.

The thing grew to the point where we had six thousand boys, with a complete course of composition.

Out of that grew an additional school which is now operating, and in which we take up linotype work, and the second school was evolved to take care of the pressmen, and I should judge that we have mobilized about two hundred and fifty thousand dollars worth of equipment out of the machinery manufacturers.

We have a four-way cooperative agreement covering the newspapers, the commercial branch of the printing industry and the various unions involved, all contributing, and then finally we tied it up with the Board of Education, where they furnish rental space, and paid the instructors, and we furnished the materials and the equipment and the machinery.

I would like to make one passing comment in regard to vocational education in this field.

One of the great difficulties that you run across in your established Board of Education, is both physical and mental obsolesence, and through the slow processes of the appropriations and so on that it is necessary for your local government to go through, your machinery would be obsolete, and the industry would have gone by it, so that what we have done there is through these joint contributions and cooperation with the machine manufacturers, we have kept the machinery up to date, and if it gets partly obsolete, they take it out and put another one in.

Q What has been your experience of the unions toward the taking out of obsolete machinery?

A My experience has been that the unions have been resistent, and they are resistant to the introduction of machinery that displaces labor. They agreed, however, in these contracts, that any new machinery, with special clauses covering this particular issue, any new machinery being brought into the plant shall have the complement of men determined by the operation of the machine.

So it was obligatory for both the employers and the unions to evaluate that machine from the cost, and come to some agreement as to the number of men to operate it. If they are dead-locked over the issue, then they would submit the matter to arbitration.

Q Has the sort of spontaneous resistance on the part of the workers to the introduction of new machiner been lessened by reason of the fact that the unions are consulted when new machinery is being introduced?

A I wouldn't say it is lessened, but it at least makes it possible to work it out. That is inherently the union group very necessarily put up resistance to machines, because all they see out of it is displacement. And the tendency is along that line.

Q You mean the displacement of men by machines?

A Yes.

Q And the loss of jobs there to come to the workers displaced?

A And even this collective bargaining set up hasn't solved that essential problem, and all it has done is work out a practical way to determine at a specific problem when it arises.

But it at least has done this, and it has made it possible to work your way through those situations without strikes, of incoming machines.

But I am giving my personal judgment that we have no solution under that process, of taking care of the worker who is displaced, or actually providing a way in which these machines can come in and be taken advantage of without having resistance to every machine that does come in.

Q Is it your opinion that this collective machinery of collective bargaining and agreements, if it hadn't been entered into, that the feeling of the workers on new machinery would result in strikes?

A Yes.

Q What has been your experience as to the willingness by unions to assume responsibility in the industry and concern itself with the welfare of the industries as such, and as a whole as distinguished from the immediate personal welfare of the workers.

A Well, there is a wide-field of joint effort on the part of the union and the employers. It is usually expressed when their joint interests are threatened. If, for instance, the unions of New York, and the employers of New York, find a job being taken to Philadelphia, immediately the unions of New York and the employers immediately get busy to keep the job in New York, and they come together in a common field.

The line still remains through the whole system of collective bargaining, of the union retaining a definite responsibility on one side, and your employers assuming a definite responsibility on the other.

That is so far as the issues as to wages, and so on, are concerned. You do find an opportunity, even with the controversy going on in these rather vital issues, to maintain continuity of policy on your printer's problem. That is there are certain fields in which there is a common interest, but when you get into the other field, of collective bargaining, you have a definite conflict which is there, and I mean you have to recognize it that there are two conflicts there.

Q In those fields where there has been a joint interest, and hence joint action, by the employers and the employees, would that be possible and practicable if the workers were not represented collectively through some union or some agency?

A No, I think that it is utterly out of the question to be worked out, and it is beyond the realm of possibility to work out an industrial plan for apprenticeship in the City of New York without collective action on both sides, because it simply isn't in the cards. It can't be done.

It is hard enough to work it out when you have got collective action on both sides.

Q Now, have you found that employers who have entered into these collective agreements have found the agreements satisfactory in so far as such agreements can be satisfactory?

A Yes, a great many of the plants in New York City that are members of this particular League organization are union because they believe it is definitely a beneficial thing to do. And some of them went in because they had to, but for the most part our larger plants accepted this collective bargaining structure as an instructive structure in industry. A great many of our plants have got beyond the point where it is any further contest on the issues of the boys to organize, and all questions of the recognition of the union.

They accepted the union, and they accepted the structure as a part of their whole industrial structure, and worked with them.

Q With respect to the issue of the right of the workers to organize, and the recognition of the union, did that issue result in the bitter conflict between employers and employees prior to these agreements?

A Yes, there have been some very bitter fights, in New York, going back over a period of time.

Q And have these fights been eliminated since these collective agreements?

A Not wholly, but it dates back to 1919. After the collective bargaining feature had been set up, but in fairness it should be said in connection with that 1919 strike, in which it tied up the industry for eight weeks, that the foundation for that strike was laid by the employers themselves, in that in 1917 they had a five-year contract, and instead of making re-establishing mutuality of interest in that contract by adjustment of wages, they tried to tie that contract up, in the face of a tremendous increase in prices, and in the face of the fact that they themselves were going to their own customers and getting adjustments in prices.

And they sat on that contract and enforced it from a headless standpoint until it blew in the open. And the action was taken by the group who were getting the lowest wages, and the purchasing power of the dollar had shrunken to forty cents, and the employers had refused arbitration, and because they said that had a contract and the union must keep it.

The net result was that in September of 1917 one of the leaders of the union, of the lower wage scales, struck a vulnerable spot and by direct action got an adjustment of wages of six dollars a week, and all of the other unions swung in behind this one organization, and in a combined direct action movement which got underway, until it was expressed in the form of withdrawal by the part of the local unions from their own international, and in 1919 the International unions and those unions that remaied with the A. F. of L. had to join forces to stop a direct action movement.

BY MR. CARMODY:

Q You feel as a result of your long experience in the printing industry, and your long experience as a representative of the employers, that it would have been the part of wisdom to have revised that contract, voluntarily, and by mutual agreement, instead of going through a strike?

A Unquestionably. As a matter of fact, we got into the Chicago situation, and put into the contract a flexible clause, and I was asked by the Board, and I spent one half-day before the second industrial board appointed by President Wilson, and Julius Rosenwald was a member, and Stanley King was a member, and the question was asked me then:

"How are you going to make labor keep their contracts," and I returned the question that labor was not the only one to break them, and then I raised the question that you can't retain a contract by purely a legalistic formula, and the only basis upon which a contract can be kept is by re-establishing mutuality of interest in that contract.

And I meant by that, that you take the Northern Pacific Railway, building a cut-off in Western Montana, and a group of high grade engineers who have done work for the Northern Pacific Railroad for years, and they ran into a gumbo hill that kept sliding down on them, and it took two steam-shovels working day and night to keep digging out of that hill, and they were going to lose everything that they had.

Now, the contractors went to the Northern Pacific Railroad, and said, "You want your railroad, let us separate this particular part which neither of us could have anticipated, and put it on a cost-plus basis, and let us finish your railroad for you," which they did.

And a logger which in Northern Minnesota, banking on an ordinary snow fall, which would let the logs out, runs into a season when the snow doesn't fall, and he makes a price on that. The mill still wants the logs, and now the sensible thing to do is for them to get together and say, "Now, these are things which neither of us anticipated, and we will have to adjust the thing."

And that is what wasn't done in a great many of the labor contracts following the war, when your price curve sky-rocketed, and labor had extended in some places long-time contracts like that New York situation, for five years, on the presumption or rather on the assumption that the flattened out curve from 1903 to 1913 would be continued, and then when that sky-rocketed up, it threw these contracts out of balance, and wisdom would have dictated that they take this thing and readjust it.

BY MR. WIRIN:

Q Now, I would like to ask you whether or not what you described to be the experience of New York is true in other cities in the United States in so far as these collective agreements are concerned, and how they function in a general way.

A Yes, sir.

Q May I ask you whether or not the experience

which you have described in the book printing industry is also true in the newspaper publishing industry, in a general way?

A It is more true. I will put it this way. The newspapers of the country are more highly organized than the job branch of the industry, and the newspapers of any significance at all are all organized in the composing rooms, and they have a national set-up on arbitration procedure.

Q Do the newspapers employers belong to the National Association to deal with them?

A The American Newspaper Publishers Association.

Q Does William Randolph Hearst belong to that?

A I don't know. I know that his plant is mostly unionized, but I don't know whether he is a member or not.

Q Now, Mr. Silcox, I call your attention to the provisions of Section 8 of the National Labor Relations Act, which defines certain practices or activities by employers as unfair labor practices.

A Section 8?

Q Yes, sir. And which in a general way prohibit employers from interferring with the right of employees to self-organization.

I will ask you whether or not as a result of your experience, you have found that such practices when used by employers lead to industrial un-rest among workers and to strikes?

A Yes, I should say that the corresponding activity on the part of unions, is to become militant under this attempted coercion.

I personally testifying here can't see how you can expect an American democracy to exist in the form of an industrial autocracy. The two things are totally opposite. I don't see that you can give the right to employers, while a corresponding right under a democratic set-up of the workers collectively is not allowed,

and that any tactics used in the form of strong-arm methods or what not, are the type of barberous practices that must be eliminated, and if necessary by legal control.

Q Is it your opinion that these practices which I have described in Section 8 of the National Labor Relations Act are essentially practices of autocracies as distinguished from Democratic practices?

A Yes, they are the type of practices that are used to exercise control over the labor organization, and they use them—that is it is a type of practice to take away the independence of representation on the part of labor groups, and to bring them under control.

It is the old play for power, and the focal point of power is to keep it on one side or the other. I am not in this testimony eliminating entirely and glorifying the union type of organization, and I am not saying that they are not guilty of the same attempts for control of power, and the tactics are used either way, and they are expressions of conflict and they will be used, unless fundamentally it is recognized that any Democratic set-up, that collective bargaining is a Democratic process and it is accepted as such, and if there is resistance on one side or the other, you are going to get tactics that these things are expressions of.

Q Let me ask you this question: The National Labor Relations Act purports to prohibit, or undertakes to prohibit certain particularly described practices by employers, and for instance, the discharge by employers of workers for union activity.

Now, in your experience has that kind of practice obtained in so far as any workers attempt to discharge an employer? Is there a parallel there in so far as union activities are concerned in their relations with the employer?

CHAIRMAN MADDEN: I don't see how anyone can answer that question.

MR. WIRIN: I will withdraw the question, and ask you this final question.

BY MR. WIRIN:

Q In your opinion would the elimination of these practices that I described in Section 8 by Federal Law, tend to eliminate the causes of some industrial unrest and strikes, assuming these practices were eliminated?

A Yes. It seems to me that there is a certain degree of parallel between this attempt on the part of the government, of the Federal Government, where its necessary jurisdiction lies, to establish the same rules of fair play that you establish in a political election.

You attempt to get at campaign funds, and get at certain types of coercion, and all of the time with the desire to protect the right of freedom of expression on the part of your individuals, and these men or these general methods used to prevent the real expression.

Now, it seems to me that the function of government to provide at least the ways and means to prevent undue coercion and types of elections, and types of expression on the part of the individual groups, so that at least they have an opportunity for fair expression.

The mere power of the employer having the job in hand, and the right to discharge shouldn't be used as a threat to force an opinion. It shouldn't be used in that way. There should be a safe-guarding of the rights of both the employer and the employee, in their own organization, to express with this type of coercion—it is a function of the government to step in and see that some rules of fair play are maintained.

MR. WIRIN: That is all of the questions that I have.

BY MR. CARMODY:

Q May I ask just two or three questions, Mr. Silcox?

I want to go back for a moment to that timber country in Montana, and Idaho, and Eastern Washington. I happen to be very fond of that country, and Missoula, and it brings back fond memories.

Did I understand you to say that the development

of that revolt organization, the Industrial Workers of the World, was a direct out-growth of the suppression of the effort of the various American Federation of Labor crafts to organize the men in the logging camps in that part of the country?

A Yes.

Q Do you know, of your own knowledge, whether there was a large lumber strike, logging strike, in the North West, and on the Pacific Coast last year in 1935?

A Yes. That was on the Pacific Coast.

Q So that in spite of the fact that these organizations were suppressed twenty years ago, there still was a large and wide-spread strike in the timber industry in the year 1935, and was that strike largely for the purpose of organization and getting recognition for the organization of the workers?

A Yes, there was a combination there. The Pacific Coast situation goes back to the type of organization that came into existence around about 1917, and developed in that Pacific Coast situation what was known as the Loyal Legion of Loggers and Lumbermen, and it was a psychological substitution, with which they provided the way for some of the I. W. W.'s to become respectable by identifying themselves with this organization, at the time of the War, in connection with spruce production.

Then the issue came up with that organization as to whether or not the men would elect their own secretaries, or the government would appoint the secretaries, and of course there is a fundamental issue.

The government representative at the time was Mr. Brice B. Disk, and he permitted the men to elect their secretaries, and the lumbermen immediately raised the question of whether they were laying the foundation for unionism.

Then the Loyal Legion became the only organization through which the employees had an opportunity to express themselves in relation to joint conferences

with the employers. But it was never a trade organization of itself.

Q It was sponsored, however, partly by the government, and partly by the lumbermen themselves, was it not?

A It was sponsored originally by the government in connection with spruce production, and then when the government withdrew after the war, then the Loyal Legion was adopted as the only then existing organization.

Q And referred to sometimes by the union men out there as a company union?

A Definitely. It was so characterized by the men, I think, and so accepted by them as being a company union.

Q Did I understand you to say that at the time you were organizing this fire-fighting brigade, it was necessary for you to go to Spokane, to arrange terms on which men would be recruited to fight fires in Idaho, Montana and Washington?

A Well,—

Q Did lumbermen have their offices in the State of Washington, when they had their forests, and timber in Idaho, and Montana?

A Yes, and that was equally true of the men. Spokane was a sort of general meeting place for the lumberjacks and of course it is a short distance into that North Idaho panhandle.

Q So the fire is no respector of state lines?

A Not a bit.

Q And the timber ownings aren't restricted by the state lines, and the offices of these companies are not always within the state in which they operate their timber?

A No, the reverse was true, and Spokane was the general headquarters of that North Idaho Region.

Q Now, in this printing business, in these areas, where there are open shop organizations and union

shop organizations of employing printers, was it your experience during some ten years or twelve years, that the employers went from one group to the other, or did they stay pretty much within a definite group?

A You had a group that stayed pretty well put all through the years. You had a marginal group among the employers who in certain stress and strains would break from a closed shop to an open shop, or would go from open back to closed, and you had a group in between.

Q Based on certain economic factors?

A Yes, and certain contingencies of the situation that arise. But there was a nucleus group that went right through from 1906 on down.

Q You spoke of technolological development particularly within the printing industry, and you have witnessed a very considerable technological development in that industry yourself in recent years, not only as it affects composition but binding, and press work?

A Yes.

Q And increased sizes of the presses, and increased production per hour of operation of the press, and linotypes, and you have witnessed that?

A Yes, I could give a specific illustration of that if you care to know it better.

Q Would you say that in the face of that technological development that industry in general has kept pace in its labor and industrial relations with that technological development?

A I should say it hasn't.

Q Would you say that our court procedure, and our law practices as it is brought into play to deal with these labor relations problems, has kept pace with this scientific and technological development during these years that you are acquainted with?

A I should say that the best way to avoid getting a good settlement is to get the lawyers interested in it. We have definitely excluded them from our New York

set-up. We knew perfectly well that when you attempted to use a formalized legal procedure, that you began to get into irrelevancies, and immaterialities, and objections raised hither and yon, and we definitely in the New York set-up agreed that one way to stymie a settlement was to get the attorneys to represent either side.

Of course, my reference is to the legal profession as a means of settling these things. My proposal goes definitely to the formalized legal procedure in attempting to settle this type of thing, and not to lawyers.

Q Again on the basis of your own personal knowledge of handling these things, not only in timber and with the ship-yards on the Pacific Coast, but in the printing industry with which you are intimately familiar, if all of these grievances and all of these disputes that are settled as a matter of routine within the industry when the proper adjustment machinery is set up, that is collective bargaining and the negotiations that are carried on, if all of those disputes had to go to the courts, any of our courts, and be handled in the formal fashion by lawyers and judges, do you think that our courts are prepared to handle these things expeditiously or nearly as expeditiously as they are handled by the machinery that is set up within the industry to do it.

A I don't think that the courts could handle it, and as a matter of fact they are not even handling commercial cases. We set up an arbitration board in New York to handle our commercial cases, because we couldn't get action through the courts. We had a case of over one thousand dollars in New York, and it took us three years to get action through the courts, and so we established an arbitration board, and we took out of the courts the handling of a great many of our commercial cases, aside from labor cases.

Q You referred to the fact that occasionally employing printers in New York are worried about or

annoyed by the fact that a printing contract might be taken to Philadelphia, which only ninety miles away, and thereby take the work out of the New York Market, and thereby reduce the amount of employment that the employer can give to the employees.

How extensively is that done?

A Well, it goes on quite extensively.

Q That is an open shop market, is it not?

A Yes.

Q One more thing—

A Of course, I would like to say in this regard that in this matter of competition between the cities, that you had New York as a big competitive market on magazines, and the mass production on Manhattan Island was doomed irrespective of what companies went out to smaller communities, because the mere process of getting the paper and so forth into that congested center, raised the question of mass production.

Where you can make up four forms a month ahead of time like the magazine that carries no news items, there is no reason why it had to be printed on Manhattan Island, and then you take a magazine like the Digest, and it stays on Manhattan Island because it has to stay there.

Q Then for certain types of printing, it is easy for people in New York who want printing done, to send it to New Jersey, Connecticut, and Pennsylvania, and thereby develop an interstate commerce radius of one hundred miles of New York that is very extensive in the printing industry.

A Yes, sir.

MR. CARMODY: That is all.

MR. WIRIN: I have one or two more questions.

BY MR. WIRIN:

Q When you use the phrase "open shop," do you mean a non-union shop?

A No. Of course, I don't think that in this industrial set-up, that the open shop is anything but

transitory, and it has to develop evidently into a strictly non-unon shop or a union shop, and that certain circumstances make it possible to run what the employers call an open shop, which the union accepts as a union shop and you have both union men and non-union men working in that shop.

But eventually, it seems to me that it means that that shop either becomes on a short labor market, it will become union, and on a long labor market, it won't.

BY MR. CARMODY:

Q If I may make one more important point, I got the impression that in Chicago that Donnelly Company was one of the largest printers, and was definitely an anti-union shop, where the Donnellys themselves said publicly that the man could not work in their plant and belong to the union.

Is that true?

A Donnelly—and this is not a matter of revealing anything, made an honest and public declaration, and he doesn't pretend to run an open shop, and he never made that protest, and he said, "I run an anti-union shop," and that is probably next to the government printing office the largest printing plant in the United States.

BY MR. WIRIN:

Q Are there instances where employers avowed to be running an open shop when their real purpose is to have an anti-union shop, and the policy is anti-union?

A Yes, I think that probably a higher degree of respectability is obtained by working under the aegis of the open shop than saying that they are strictly non-union, and there is a certain amount of public sentiment, and the average American would say that the fair thing is that one has the right to organize and the other side, I mean by and large, has the same right, so that I would call it that.

BY MR. CARMODY:

Q You still retain your friendly relations with the employers and employees of the industries and consider yourself very much interested in the printing industry, do you not?

A Yes.

BY MR. WIRIN:

Q State whether or not employers who maintain the open shop refuse to then enter into collective agreements with the Union?

A I would say practically all of the open shops refuse to enter into collective agreements with the men. They may employ union men, and I know shops, as you well know, that things run from every transition from a complete union shop, to a complete non-union shop, and sometimes your composing room is organized, and the binding is not, and you have the centers of control by virtue of the fact that it or the skill hasn't disintegrated, and in your composing room you have a high degree of organization, and when you get into the bindery, where the skill is completely disintegrated by machinery, when it comes to putting a book signature on a moving crane, anybody can do it, you get a high degree of labor turnover, and certain problems growing out of that.

MR. WIRIN: That is all.

May we have a recess until two o'clock at which time we will put on additional testimony?

CHAIRMAN MADDEN: All right. We will adjourn until two o'clock.

(Whereupon, at twelve o'clock, the hearing was adjourned to reconvene again at two o'clock, the same day.)

Alderson

AFTERNOON SESSION

(Afternoon Session convened at two o'clock)

CHAIRMAN MADDEN: We will proceed.

Whereupon

BASIL M. MANLY

was produced as a witness for and on behalf of the National Labor Relations Board, and having been duly sworn by the Chairman, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WIRIN:

Q Your full name is Basil M. Manly?

A Yes, sir.

Q Where do you live?

A Washington, D. C.

Q And do you hold any government position?

A I am Vice-Chairman of the Federal Power Commission.

Q Some time in 1912, were you connected in any way with a commission known as the Industrial Commission?

A Not in 1912. Beginning in 1913 I was.

Q Was that Commission created by an Act of Congress in 1912?

A Yes.

Q In what capacity were you connected with the Commission?

A I was Director of Research and Investigation of the Commission.

Q How many persons were members of that Commission?

A Nine members of the Commission.

Q What were your duties as Director of Research and Investigation?

A Generally to direct the work of the staff of investigators and experts and also to plan and direct the public hearings of the Commission.

Q Prior to your being connected with the Commission were you interested in Labor Relations in any way?

A Yes, I have been interested for several years.

Q What was the nature of your interest, and what had you done?

A My first work in that field was with the Bureau of Labor of the Department of Commerce and Labor as it was at that time, and first as an agent of that Bureau in the investigation of Women and Child wage earners, in 1908 to 1910.

Then I was put in charge of the investigation of wages and working conditions in the Steel Industry, which required a couple of years and resulted in the publication of a four volume report.

Following that, I believe that I made the investigation of the relation of the increase in prices of anthracite coal to the wage adjustment in that industry.

Then I was called in as an expert in the first arbitration that was held in the Coat and Suit Industry, of which the present Justice Brandeis was Chairman, and I believe that those were all of the important connections up to the time that I went with the Commission on Industrial Relations.

Q What was the occasion for the appointment of the Commission and for the Act of Congress which authorized and directed the appointment?

A The creation of the Commission arose primarily out of the very large number of strikes that had taken place during the preceding two or three years.

There had been a condition of Nation-Wide Industrial unrest, centering most largely in perhaps the Colorado strike, which ran over a period of several years, the big strikes in the textile industry, in Lawrence and Lowell, Massachusetts, and the unrest in the coal industry generally, and the metal manufacturing industries and the building trades.

Q Were these strikes, many of them of national consequence?

A They were of extraordinary violence, I should say, and many of them had a very direct effect upon

interstate commerce, which seemed to justify Federal intervention.

Q By whom was the Commission appointed?

A The Commission was appointed by President Wilson, and I might clear that up a little because as a matter of history, President Taft had appointed a Board not long before the conclusion of his term of office, but that membership was not confirmed and consequently it became the duty of President Wilson to name a new board, and he named an entirely different membership.

Q The original Act of Congress which authorized and directed the appointment of the Commission was passed during President Taft's administration?

A Yes, August of 1912, as I remember.

Q What was the extent of the investigation, how long a period did it last?

A Oh, the investigation extended over a period of some two years. The staff was organized in October, 1913, I believe, and the investigations were instituted immediately which led to public hearings, subsequently, beginning, I should say, in January, about 1914, and running almost continuously for a year and a half interims between the hearings.

The hearings were held in almost every important industrial center in the United States, and the Commission went to the scene of the difficulty, rather than attempt to bring witnesses to any central point.

Q Approximately, how many witnesses were interrogated?

A My memory was that it was something more than seven hundred.

Q Were those witnesses workers and union representatives and representatives of labor?

A My memory was that it was devided equally into three groups—the witnesses who represented the employers, most of whom were either selected by or suggested by employers' associations and other organiza-

tions of employers; witnesses representing labor, who were usually represented by the American Federation of Labor or by local labor organizations, and the third group of witnesses who were not connected with either employers' organizations or with labor organizations. That group included various kinds of people, students of the subject of industrial relations, officials of State Labor Bureaus, directors of employment agencies, and various other official and unofficial persons of that kind.

Q Did the Commission publish a report?

A The Commission published a report on the situation, and the situation regarding the report was rather unusual.

Earlier in the year of 1913, the Commission directed me as the Director of Research and Investigation, to prepare a report of the staff for presentation to the Commission.

It was not intended as a Commission report. At the same time, Professor Commons, who was one of the outstanding members of the Commission, prepared a draft of a report of his own dealing primarily with the machinery which he believed to be best adapted for carrying into effect the plans which he had in mind for the Adjustment of Labor conditions.

Those plans centered primarily around the creation of industrial commissions within the several states, and I believe also a plan for a National Industrial Commission.

As a result there were in essence two reports made by that Commission.

Q In addition to the two reports, was the testimony that was submitted before the Commission published?

A Yes, that was published in 11 volumes.

Q How many volumes was the entire report?

A Well, the testimony made up 11 volumes and the report made up the twelfth volume.

Q Was there any essential difference between the group which we will call the Commons' group, and the group of the Commission that signed the report which you prepared insofar as the advisability of recognizing the principle of collective bargaining was concerned?

A There was no difference at that point at all.

The Commission, I believe you will find, if you will examine the separate reports, was unanimously in favor of proper protection for the right of organization and collecitve bargaining.

Q Was there any difference of opinion as to the two groups as to the inequality of the individual worker as such in negotiating with his employer concerning wage agreements?

A Well, if there was any difference, it was a difference of degree, rather than a difference of character.

I think that the Commons' group was not perhaps as definitely determined toward the protection of that right, as the staff which I had the honor to head at that time, felt to be necessary under all circumstances and conditions.

Q Who was the Chairman of the Commission?

A Frank E. Walsh.

Q Did he sign the report which you prepared?

A Yes.

Q Who else signed the report that you prepared, do you remember offhand?

A John B. Leonard, Austin B. Garretson, and James O'Connel.

Q What conclusions did your group arrive at concerning the denial of the right of organization by employers to employees, and the necessity or advisability of collective bargaining?

A Well, the Commission found throughout the United States in what you might call organized industry, large scale industry, a general denial of the right of organization and collective bargaining.

They found that in some cases, in quite aggravated form, particularly in isolated communities where the industry or the employer would exercise complete control within the community and not only inhibit the right of organization but so completely would such industry dominate the communities that we would forbade any persons from coming in to the community for the purpose of organizing or talking with the employees.

Q Would there be any interference of the meetings of the employees called for the purpose of organizing?

A Oh, yes.

Q What else, if anything, did the Commission find with respect to the problems of collective bargaining?

A We found about one hundred and seventy-five pages of it, as I remember, and we found quite extensive interference, with the right of collective bargaining and the right of organization, in large scale industry.

They found generally, as I recall it, that the organization was not permitted, "permitted" is not quite the word, but was interfered with throughout the major part of organized industrial production.

Q Now, Mr. Manly—

A I would rather use large scale industrial production, that was what I meant to say, instead of organized production.

Q Now, Mr. Manly, there has already been induced in evidence in this case as a Board Exhibit what Professor Edward Berman has identified as being a fair summary of the report of the Industrial Commission, and this memorandum is captioned Industrial Relations, Final Report and Testimony submitted to Congress by the Committee on Industrial Relations.

I believe that you have seen a copy.

A I have read over a copy.

Q I call your attention particularly to the material which appears on page 3, of the memorandum,

which purports to be a quotation from the testimony before the Commission, then Mr., and now Mr. Justice Brandeis.

In the course of that, Justice Brandeis discusses the problem of what he calls industrial absolutism, namely the denial to employees of the right to participate in the conduct of industry, and in determining their own lot in industry.

I will ask you at this time whether or not your group was substantially in accord with the testimony of Mr. Brandeis.

A Yes, that was incorporated, and his testimony, I believe, was incorporated with approval in the report of the Commission.

Q Now, Mr. Manly, what did your group find the facts to be with respect to the advantages of the worker of being a member of a National Union as distinguished from a local or a company union?

A Well, we found generally that the advantages to the worker were dependent upon the strength of the organization with which he was affiliated and its freedom from control by the employing interests.

That freedom from control was in large measure in inverse proportion to the dependence of the members of the organization upon employment by that particular employer.

A local organization employing other persons than the employees of that particular establishment was stronger in its bargaining power than a company union and by the same token, a national union equally well managed was stronger in its bargaining power and in its power to protect the workers interests than a local union.

Q Now, Mr. Manly, I call your attention to the following quotation from the report made by your group, reading as follows:

"To suggest that labor unions can be affective if organized on less than a national scale

seems to ignore entirely the facts and trend of present-day American business."

I ask you whether or not there was any substantial disaccord with that, on the part of the members of the Commission that did not sign your report?

A I don't think that there was any lack of accord on that point.

Q What were the conclusions of your Commission as to whether collective action by employees in collective bargaining had improved conditions of workers.

A The findings of the Commission were that the conditions of the organized workers were on the whole decidedly better than those of the unorganized.

Q Did the Commission make any findings as to whether or not discharged by employers of workers because of their union activities existed or rather took place?

A Yes, widespread conditions of that kind were encountered in all parts of the country.

Q State what the findings of your group were with respect to the use of black lists by employers?

A Black lists in employers were found to be in existence under many circumstances and conditions throughout the country.

Q Perhaps you had better describe, at least for the purpose of the record, what the black list is

A Well, black listing consists generally in the establishment of a system by a group of employers, under which an employee who is discharged by one employer for whatever cause he wished, goes on the list so that the other employers are notified not to give him employment.

That is the essence of black listing and it takes many forms.

Q Does the employer who receives the information comply with the purported information and refuse employment to a worker so listed?

A If the scheme of black listing is carried through, yes.

BY MR. CARMODY:

Q May I stop for just a moment. Isn't it customary in American Industry for a prospective employer to ask an applicant for the names of his previous employers, particularly his most recent employer?

A Yes, that is a very common practice.

Q And then isn't it common practice for the respective employer to write to or telephone to the former employer and ask him what sort of a man this man is?

A Yes.

Q Then if that is the practice, and if there is this black list that you speak of, hasn't it far-reaching consequences where a man once gets on some list of that sort?

A Oh, yes.

Q Might it not prevent his getting employment anywhere within the region in which he normally lives over a longer period of time?

A It would at any rate very greatly restrict his opportunity of employment. As a result of it, employees go under assumed names and deny having had previous employment in a region, in the hope of getting by.

Q That was brought out through this investigation that the Commission made?

A Yes, many cases of that kind.

BY MR. WIRIN:

Q Did your investigation disclose as to whether or not those workers who were active in seeking to organize a labor union, whether or not the names of such workmen were directly on those black lists?

A Oh, yes, they were the ones that were particularly on such lists.

BY MR. CARMODY:

Q Isn't that a dastardly practice in effect?

A The Commission felt that it would be so.

BY MR. WIRIN:

Q The Commission condemned the practice, did it not?

A It did.

BY MR. CARMODY:

Q Do you think that otherwise respectable employers persecute applicants for employment after that fashion, is that the record?

A That is the record.

Of course, the employers defense of such practice where there was such a defense, I believe the defense was made in the city of Los Angeles, for example, where the practice was very common, and they had what they called, I think, Employment Bureau of the Employer's Association, which was very well organized, and which was very effective in keeping men who were known as trouble makers from securing employment.

The defense was that the employer did not want to have in his employment, men who might subsequently cause trouble, and become active in the organization of unions, and they were justified in using any means of that kind in acquainting themselves with the past record and activities of the employee.

BY MR. CARMODY:

Q And those Bureaus set up by groups of employers or employer's associations are paid for by the employers.

A Oh, yes.

Q And supported by them financially.

A Yes, sir.

Q Do you know whether the expense of that kind of a bureau is made a part of the expense of running a business?

A Oh, yes, it would be charged in with the ordinary expenses of running a business.

Q And it would get into the price of a product and ultimately the price of the product that the customer pays for the product?

A Yes, sir.

Q So the public pays for the supporting of this black listing practice?

A That would be the effect?

Q All right.

BY MR. WIRIN:

Q In addition to the practice of discharges and black lists which you have described, did the Commission find any evidence of the existence of espionage or spying upon the union activities of workers?

A Oh, yes, many cases.

Q Now, will you describe just what the facts were as found by the Commission with respect to the existence of labor espionage, first as to the extent and second as to the methods used?

A Well, the general system of espionage consisted in the retaining of so-called detective agencies to supply what were known as undercover men, to work in the plants as though they were ordinary workers, to mingle with the workers, to report upon the activities both of individuals and of groups, and to advise the employer of any attempts to bring about organization, or to hold meetings for that purpose, and matters of that kind.

The practice was quite wide-spread, or I had better put it the other way, we encountered it in a great many cases, and how wide-spread it may have been nobody knows because those were very carefully guarded contracts, and the worse feature of that situation, of course, is not so much the espionage as the fact that it continued employment of the detective agent, and the spies, as dependent upon seeing that unrest, and other things as continued in the plant.

By MR. CARMODY:

Q You mean that these spies and detectives created unrest in order to create a continuing demand for their services?

A Yes, sir.

BY MR. WIRIN:

Q These undercover agents by whatever name they might be called, were they on the rolls or frequently members of labor unions, I mean without the knowledge of the labor unions or its members as to the facts that they were spies?

A They were on some occasions whenever they could get into the union organization and secure a union card. I have even known them to be officers of such unions.

Q And those instances where they were officers of the union, would they turn over the list of union members to the employer, or the detective agency in turn would turn that list over to the employer?

A I don't remember at this time a case of that kind, and it may have existed, but I don't remember.

BY MR. SMITH:

Q May I interrupt? What use would they make of the information which they gathered about the union through their official position?

A Why, they would make several different uses of it, Mr. Commissioner. They would have inside knowledge of all of the plans for organization, and that information would be passed on to the employers. Presumably lists of members would be likewise, and the reason I don't say so is that because at this moment, I can't recall a clear-cut case that came under observation.

In other cases, cases where they became officers of the union, very frequently their activities were used to put the union in a bad light, either by inflamatory speeches, which would turn public opinion, or for the purposes of that kind.

Many cases of that sort were encountered by the Commission.

BY MR. WIRIN:

Q Well, the information which these labor spies secured, as a result of their activity in labor unions,

was that information used as a basis by employers for discharging employees or discriminating against them because of union activities?

A Oh, yes. That is what they got the information for.

Q Now, I believe you testified that your Commission reviewed a number of hundred workers or representatives of workers, and did you arrive at any opinion as to the effect of discriminatory discharges, and of the use of spies, and black lists upon the workers mind, in terms of—in other words, did it lead to industrial unrest or contentment on the part of the workers?

A The Commissions finding was that it tended to promote unrest, and dissatisfaction, but even more seriously it tended to create a feeling of desperation, which in many cases led to violent and destructive conflicts.

Q Did it find as to whether or not the existence of espionage and other practices you have mentioned, made for better or worse work on the part of the worker?

What effect did it have on the efficiency of the worker?

A I don't know that the Commission made any finding on that particular point. This has been twenty-three years ago, gentlemen.

Q It sounds rather current though.

A Perhaps it does.

Q Well, did it find whether or not these practices led to strikes on the part of the workers?

A They found that it led to wide-spread unrest among the workers, and where a sufficient group found it possible to get together, it usually led to strikes and to a different kind of strikes ordinarily from the strike that was common among well organized industries. The sort of strike you get when you have had that condition of repression existing for a period of years as an explosive strike.

The normal condition that you have in a well-organized industry, when the strike comes, is a cessation of work, and a struggle of the economic forces of the two sides, and sooner or later a conclusion of the difficulties by negotiation.

Q I call to your attention a language of Mr. George West. He was assigned by the Commission, wasn't he, to investigate the Colorado Coal strike of 1913?

A Yes, sir.

Q I call to your attention the following quotation from his report to the Commission:

Drawing the distinction between the two kinds of strikes and saying with respect to one kind of strike, "on the other side of the line are those revolts that are animated primarily not by the need or desire for higher wages and greater material blessings but by resentment at the possession and exercise by the employer of arbitrary power."

As a result of your experience on Industrial Commissions, do you subscribe to that as a fair description of that other kind of strike that you have been referring to?

A That is a fair description of it.

MR. CARMODY: Who makes that statement?

MR. WIRIN: George P. West.

THE WITNESS: He made an investigation of the Colorado strike and made a report to the Commission.

BY MR. WIRIN:

Q Are you also in accord with Mr. West's finding that the struggle in Colorado in 1913 was primarily a struggle against arbitrary power in which the question of wages was secondary as an immediate issue?

A Yes, I think that is probably a fair summary of that particular conflict, which ran over a period of many years.

Q Now, I have already called to your attention the memorandum which has been introduced in evidence and which purports to be a summary of the report of

the Commission, including your group as well as quotations from it, and I ask you whether or not the copy which has been shown to you represents a fair summary and a true quotation from the report so far as you can recollect it?

A Yes, I think it is a fair summary of that report, of the report which dealt with the general question of collective bargaining.

Q I am going to move on from the Industrial Commission to the National War Labor Board, and if the Board wants to ask questions, now would be the time to do it.

We have just got Mr. Manly's permission to interrupt his testimony and get another witness out of the way.

With Mr. Manly's permission and the Board's approval, we would like to do that.

Whereupon

WILLIAM V. HARDIE

was produced as a witness for and on behalf of the National Labor Relations Board, and having been duly sworn by the Chairman of the Board, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EMERSON:

Q Will you give your name to the reporter?

A William V. Hardie.

Q You are connected with the Interstate Commerce Commission?

A In the capacity of Director of the Bureau of Traffic.

Q And you are testifying here at the request of the National Labor Relations Board?

A Yes, sir.

Q How long have you had the position you now hold with the Interstate Commerce Commission?

A Since April 1920.

Q Were you connected with the Commission before that?

A No, with the United States Railroad Administration, and for a number of years mentioned in 1907, continuously in traffic work, either with railroads or shipper's organizations.

Q Does your position with the Interstate Commerce Commission involve the supervision of matters relating to transit?

A The Bureau is a depository for all tariffs filed by the carriers, and has jurisdiction over the rules and regulations for their preparation and filing, including tariffs that have to do with transit, and I also have to do as a matter of my capacity as director of the bureau, I am advisor to the Commission on Traffic matters including those having to do with transit.

Q Now, I will ask you, Mr. Hardie, whether you have prepared a memorandum which deals with the matter of transit and whether you have that with you?

A I have.

Q Are the matters which are stated in this memorandum correct to the best of your knowledge?

A True and correct in every respect so far as I am in a position to say, but as the statement itself explains it was prepared somewhat hurriedly and there may be some slight inaccuracies, but in the main, I am sure it is both true and correct.

Q This was prepared by you personally?

A It was.

Q I would like to offer this in evidence.

CHAIRMAN MADDEN: It is admitted.

(The statement referred to was received in evidence and marked Board Exhibit No. 30, Wheeling Steel Corporation, Board Exhibit No. 47, Jones & Laughlin Steel Corporation 90, Cruicible Steel Company of America, No. 35)

MR. EMERSON: I think that the memorandum states about what the substance of what Mr. Hardie would testify to and then and therefore, it is not necessary to ask him any further questions.

CHAIRMAN MADDEN: Thank you very much.

(The witness was excused.)

Whereupon

BASIL M. MANLY

was recalled as a witness for and on behalf of the National Labor Relations Board, and having been previously duly sworn by the Chairman of the Board, was examined and testified as follows:

DIRECT EXAMINATION (Continued)

BY MR. WIRIN:

Q Thereafter were you Co-Chairman of the National War Labor Board?

A Yes.

Q Who was the other Co-Chairman?

A Former President William Howard Taft.

Q And is that the same William Howard Taft who was Chief Justice of the United States Supreme Court?

A Yes, sir.

Q Can you tell us the personnel of the Board?

A The personnel of the Board changed somewhat, and the two joint chairmen originally named were former President Taft, and Frank P. Walsh.

Q Did you succeed Frank P. Walsh?

A Yes, sir.

Q Did he resign during the work of the Board?

A Yes, he resigned during the work of the Board, but the general constitution of the Board was that of five members, representing the employing interests, who were recommended by the National Industrial Conference Board, and five members representing the Labor interests, who were nominated by the American

Federation of Labor, and each of them had an alternate, so that in addition to the two joint chairmen, you had for effective working purposes, twenty-two members of the Board.

It was necessary to have a board of that size because of the very great volume of work that had to be handled during the war period. Minor cases we usually handled by a section consisting of one representative of the employer's interest, and one representative of the labor interests, and if they could get together, that was closed, and the decision was automatically approved by the Board, and if they couldn't get together it would come to the Board.

Q By whom were these persons appointed?

A By the President of the United States.

Q Did the President also appoint concurrently with the appointment of the Board, certain members as a panel of umpires?

A Yes.

Q Could you give us the names of that panel?

A The umpires panel consisted of Henry Ford, Matthew Hale, James Harry Covington, and former Justice Charles Caldwell McChord, V. Everit Macy, Julian William Mack, Henry Suzzallo, then President of the University of Washington John Lind, William R. Willcox, and Walter Clark, of Raleigh, North Carolina.

Q Of the Supreme Court of North Carolina?

A Chief Justice at that time of the Supreme Court of North Carolina.

Q Now, will you tell us briefly what was the history of the appointment of the Board, and what preceded immediately the appointment of the Board?

A The Board was created in the early part—or the early part of 1918, when labor unrest, and difficulties steps leading up to the Board were taken during the about wages adjustments were seriously interferring with the prosecution of the war.

The first step consisted in the calling by the Secretary of Labor of an Advisory Council of seven members, headed by Honorable John Lind, who with the Secretary of Labor recommended to the President, the creation of a National Labor Conference Board, which should contain the leading employer interests and leading labor interests, under mutual chairmanship, to recommend a plan for the handling of industrial relations during the period of the war.

That Board met under the joint chairmanship of—such a board was appointed by the President with William Taft and Frank P. Walsh as joint chairmen, and with substantially the same representation which I have already described.

BY MR. CARMODY:

Q What year was that?

A 1918.

The Conference Board met and held rather prolonged sessions for a period of a week or more, and then submitted to the President a report recommending the formation of a National War Labor Board to continue throughout the period of the war, which should be in effect a Supreme Court of Industrial Relations, and also recommended for the President's consideration the promulgation of a set of principles which should govern industrial relations during the period of the war.

Those recommendations were accepted by the President and embodied in a proclamation, and on April 8, 1918, in which the President named as members of the War Labor Board the two joint chairmen, Messrs. Taft and Walsh, and as representatives of the Employers, Loyall A. Osborne, Mr. C. E. Michael, W. H. Van Dervoort, B. L. Worden, L. F. Loree.

Representing the Wage Earners, Frank J. Hayes, William L. Hutcheson, William H. Johnston, Victor A. Olander, and T. A. Rickert.

BY MR. WIRIN:

Q Did these principles recommended by the Conference, by both the representatives of the workers and the representatives of the employers, and which President Wilson included in his proclamation, did they include the right of the workers to organize in trade unions, and bargain collectively through chosen representatives, and that the right should not be denied, abridged or interferred with by the employers in any manner whatsoever?

A Yes, that was the very basis of the principles enunciated by that Board.

BY MR. CARMODY:

Q Was Mr. Loree on the Board that enunciated those principles?

A Yes, sir.

Q Commonly referred to as one of the most reactionary employers in the country, hostile to the organization of his own men even on a railroad, in this day of railroad legislation, and he subscribed to that at that time?

A He was a member of the Board and the Board brought forth the principles, Mr. Commissioner.

BY MR. WIRIN:

Q Did he dissent from the recommendations?

A No.

Q Were the recommendations of the Board unanimous, so far as they were concerned?

A I was not connected with the Board at that time.

That is a matter of record that you would have to secure from some other source.

Q Now, is there any record of any member of the Board challenging these recommendations?

A No.

Q Did the Board also recommend and was this included in the proclamation of President Wilson as the Constitution as it were, of the proposed National War

Labor Board, that employers should not discharge workers for membership in trade unions, nor for legitimate trade union activities?

A Yes.

Q Did this board or the personnel that you have described, then set about adjusting labor difficulties throughout the country on the basis of the recognition of these rights, as I have mentioned them?

A Yes.

Q Could you tell us briefly what the nature of the work of the Board was, and how many cases it handled, and how it handled them, perhaps to give precedence for this Board?

A The Board handled something like more than twelve hundred cases, during its life time, and those cases consisted of two classes—first, what was known as Joint Submissions, in which two parties joined in asking the Board to sit as a Board of Arbitration with an agreement to accept whatever award was handed down, and the other cases were ex parte, in which either the employer or the employees would bring in a complaint.

Those complaints were immediately assigned to what we call the Bureau of Investigation, which investigated the facts alleged in the complaints, and if they found them to be substantially as stated and to constitute something material in the way of a grievance, the case would be set down for hearing, and the court had compulsory processes so that it was able to secure information and require the attendance of witnesses, and as a result of those hearings awards would be made in the same way that they would be made in a case of joint submission.

There was not the binding effect legally for those ex parte cases that there was in the case of the joint submission.

In practically all experiences during the war period the awards of the Board were carried out, because

of the very large powers which the government possessed during the war period, and because the government through the Ordnance Department and other purchasing agencies was the largest buyer during the period of the war.

There were, I believe, only two cases in which the War Labor Board had active defiance of its awards, and one was the case of the Smith and Wesson Arms Company, which refused to abide by an award which because it included a direction to that company to abandon a formal contract which it had in effect for many years, under which its employees agreed not to become connected with any labor organization, and the company refused to accept the award, and refused to obey it and the War Department took over the Smith and Wesson Arms Company and ran the Company during the period of the War and put the award into effect.

The other case was a case involving the employees in the munitions plants at Bridgeport, Connecticut, who had joined in a submission to the Board of the questions at issue in that community, which was the very center of the war work, and they were not satisfied with the terms of the award, and as I remember it, refused to work under it.

They were notified that through the proper channels that the work or fight order would be put into effect, and that trouble was ended.

Q As I understand it, the work of the Board and the awards of the Board, dealt with the disputes involving wages and hours and working conditions on the one hand and disputes over collective bargaining on the other hand?

A Very frequently, of course, it included all of those questions and some times a number of others.

Q Now, with respect to the problems of collective bargaining, in which issue this Board is primarily interested in, solely interested in, did the Board in the

course of its work find any effort by employers to interfere with collective bargaining?

A Yes.

Q Did the Board find that employers discharged employees for their union activities?

A Yes.

Q Did the Board find that some unions were being financed and dominated by employers or that is so-called company dominated unions?

A Yes.

Q Now, what steps did the Board take to prevent these practices?

A Why the Board in its decision would issue the order which in its judgment was necessary to remove those causes of complaint or cure the practices complained.

Q In the cases of discharges did it order the reinstatement with back pay?

A Yes.

Q Now, as I understand it, all of the awards that were issued by the Board were with reference to those issues involving collective bargaining were based on the principles as proclaimed by the President?

A Yes.

Q You were applying those principles in your awards?

A Yes.

Q Did you find any precedent for your particular awards, or did you build the precedence out of the realities of the situation?

A We had to make the common law as we went along, on the basis of the President's proclamation.

Q Is it fair to say that your Board began to make the common law of labor, insofar as anything was concerned?

A So far as any national law was concerned.

BY MR. CARMODY:

Q As far as what?

A As far as any national tribunal was concerned. There may have been state tribunals that dealt with similar questions, but I don't know of them.

BY MR. WIRIN:

Q You mean National governmental agencies?

A Yes.

Q Now, did then, Ex-President and later Chief Justice Taft concur in the general principles which the President had proclaimed?

A Yes.

Q And did he concur in the awards that were issued with respect to the reinstatement of discharged employees who were discriminated against and the other awards of the board?

A He participated in those awards which were made either by the Joint Chairman of the Section, or by the Board as a whole as a Board.

I am sure that they covered the whole part of cases to which they referred.

Q Did Mr. Raft express himself publicly in any form on the issues of collective bargaining, and practices of employers during that period?

A Yes, he was at that time writing articles, signed articles for the Philadelphia Public Ledger, and in the course of that period he had occasion somewhat frequently to discuss the work of the Board, and the reasons why it took the attitude that it did, in particular cases.

Q Now, I show you what purports to be a summary of the History and Experience of the National War Labor Board, and which contains quotations from some of the decisions of the National War Labor Board, and ask you whether or not that summary is a fair summation of the work and the decisions of the Board insofar as collective bargaining was concerned, and whether or not the quotations to the best of your present recollection are correct?

A I have examined that with some care and I be-

lieve it is a fair summation of the work of the Board, with reference to the particular question of collective bargaining.

Q At this time, I would like to offer into evidence, this paper which Mr. Manly has identified and which is captioned, "History and Experience of the National War Labor Board," as the Board's exhibit next in order.

CHAIRMAN MADDEN: It is accepted.

(The paper referred to was received in evidence and marked Board Exhibit No. 31, Wheeling Steel Corporation Board Exhibit No. 48, Jones & Laughlin Steel Corporation, No. 91, Crucible Steel Company of America, No. 36.)

THE WITNESS: I might call your attention to the fact that this is a typographical error on Page 3, in the fourth paragraph under the "right to organize", the last word in the first sentence should be, "should" instead of "shall".

BY MR. WIRIN:

Q Otherwise it is all right?

A Yes.

Q May I say for the record that this summary consists very largely of a resume of the material that appears in a publication which reports the experiences of the National War Labor Board, which publications and official government publication, issued and printed by the Government Printing Office in 1922, by the United States Department of Labor, Bureau of Labor Statistics, and is denominated Bulletin of the United States Bureau of Labor Statistics, No. 287, and in view of the fact that this is a moderately bulky record, we ask that the Board take judicial notice of it without offering it into evidence.

CHAIRMAN MADDEN: It will be done.

BY MR. WIRIN:

Q Now, Mr. Manly, I am going to jump back to the Industrial Commission because I neglected to ask you one question, and that is this: As a result of the investigations made by the Commission, with particular reference to your group, did you ever recommend any Federal action looking toward the elimination of certain unfair practices by employers, and if so, briefly what was that recommendation?

A I should say that the principle recommendations contained in the report prepared under my direction was first, incorporated among the rights guaranteed of the constitution, of the rights of individuals to form associations not for profit but for the advancement of their collective and individual interests, and second, the enactment of statutes specifically protecting this right and prohibiting the discharge of any person because of his membership in a labor organization.

> "3. Enactment of a statute providing that action on the part of an association of individuals not organized for profit shall not be held to be unlawful where such action would not be unlawful in the case of an individual."

Q Did that include Federal statutes?

A The recommendations were going to the Congress of the United States so it could only have meant Federal statutes.

Q All right.

A And the other principal recommendations I believe, was that the Federal Trade Commission be specifically empowered and directed by Congress in determining unfair methods of competition, to take into account and especially investigate the unfair treatment of labor with particular reference to the following points:

> "(a) Refusal to permit employees to become members of labor organizations.
>
> "(b) Refusal to meet or confer with the authorized representatives of employees.

"(c) That the Department of Labor," and so on.

Q Now, did the Congress at that time pass any legislation in accordance with the recommendations of your group?

A No, no legislation was even considered. Our report was submitted about the time that the relations with Europe were becoming very tense, and no legislation was considered at that time.

Q Were you ahead of the times with your recommendations in your report?

A No, the War was ahead of us.

Q Now, I show you a copy of the National Labor Relations Act, and call your particular attention to the provisions of Section 8 on page 4 of that, and I ask you whether or not in terms of your experience on the Industrial Commission, and on the National War Labor Board, Federal legislation is necessary to prevent the commission of the acts of employers which are described in that section as unfair labor practices?

A Yes, I believe that it is the most effective way to deal with the situation.

Q Now, is Section 8 in defining certain unfair labor practices, substantially in accord with the findings by the Industrial Commission and the National War Labor Board?

A Yes, I am rather proud of that, after some twenty-one years, that this particular suggestion should have been enacted into legislation.

Q Now, I call your attention to the provisions of Section One of the National Labor Relations Act, which contain a declaration of findings of economic facts. That is by Congress, and a declaration of policy.

I will ask you whether or not in terms of your experience the denial by employers of the right of the employees to organize, and the refusal by employers to accept the procedure of collective bargaining, leads to strikes and other forms of industrial un-rest.

A Yes.

Q And is that finding of Congress, in your opinion, and from yor experience, substantially correct?

A Yes.

Q In the course of these findings, Congress discusses the inequality of bargaining power, between the individual unorganized employee and his employer. What has been your experience as to whether or not such an inequality of power actually exists.

A I think that there is no question about it.

Q And I will ask you whether or not in your opinion and out of your experience the prohibition by Federal law of the practices that are listed in Section 8 would tend to eliminate certain causes of industrial unrest and strikes?

A I believe that the provisions of Section 8 would have a very strong tendency in that direction.

MR. WIRIN: That is all.

MR. CARMODY: I have one or two questions.

BY MR. CARMODY:

Q Have you any idea, Mr. Manly, why the country has to go through this kind of cycle about every ten or twenty years, of going back to the Pullman strike, in 1893, recited here, a few days ago, when the Federal Government sent troops in, to control the situation, and then the Colorado strike of 1913, when the Federal Government had to send Federal troops in, and that goes on, and each of these events is followed by an investigation by public spirited and intelligent citizens, and they make recommendations that the employer cease to deny the rights that lead to the strike, and to the costly suppression of the strike, and then we come along to the War, and we have to create a War Labor Board, and we go on year after year doing this, and still when the Board in the year 1936, seeks to enforce a law passed by the Congress, we are be-set by injunctions and lawyers who come and say that it is a denial of all of the rights of the employers even to

allow them to participate in an election to choose their own representatives?

Can you give me some idea from your own experience in public life why that goes on and on and on, and there seems to be no end to it?

A I think it is the same reason that you have international conflict and war, and the same lack of intelligence on the part of the human animal.

Q I have one or two more questions. That conflict or that contract that the Smith and Wesson Company had, and which it would insist upon imposing upon its people, was commonly called a Yellow Dog contract, wasn't it?

A Yes, sir.

Q And that has since been outlawed by the laws of the land?

A Yes, sir.

Q So it is no longer legal to execute such a contract as they insisted they had to have in order to preserve their business.

A In that particular field to which your Federal Statute applies, Smith and Wesson, of course, were engaged in local manufacture and would not be affected by the provisions of the earlier statute, except as it may be engaged in interstate commerce.

Q Of course, there are some people who say that the manufacture of munitions is interstate commerce, because there would be no sense of manufacturing munitions for a small local locality.

Do you know as a matter of your experience as Vice-Chairman of the War Labor Board, whether or not employers ever sought to enjoin the Board in carrying out its business through appeal to the Federal courts or the Circuit Courts or the Supreme Court at that time?

A I don't believe that there was a case brought, Mr. Commissioner. If there was, it never interferred with the work of the Board.

Q The rules and regulations of the Board and the processes of the Board applied to manufacturing companies, at that time?

A Yes, sir.

Q As at matter of fact, is not that a fact that at that time all labor disputes arising out of transportation were handled by another Board?

A Yes.

Q That is all.

BY MR. WIRIN:

Q Did you find in your experience during the War on the National War Labor Board, that it was necessary to continue the flow of commerce, and the flow of raw materials into manufactured goods in order to carry on the prosecution of the War?

A It was very vital to the life of the nation, as we believed at that time.

MR. WIRIN: That is all.

CHAIRMAN MADDEN: Thank you, Mr. Manly.

(The Witness was excused.)

MR. WIRIN: May we have a short recess of five minutes before we put on Mr. Bowers?

CHAIRMAN MADDEN: We will have a short recess.

(Recess.)

Whereupon

GLEN ALWYN BOWERS

was produced as a witness for and on behalf of the National Labor Relations Board, and having been duly sworn by the Chairman of the Board, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WIRIN:

Q May we have your full name?

A Glen Alwyn Bowers.

Q Where do you live?

A In New York.

Q Were you subpoened in New York?

A Yes, sir.

Q To appear as a witness?

A I was.

Q And you are here in response to the order of the subpoena?

A Yes, sir.

Q In 1917, were you connected with any employment managers group?

A Yes, with the employment managers group of Rochester, the New York Chamber of Commerce.

Q And what were your duties generally in connection with that position?

A Analyzing and reporting on conditions and procedures in employment in the various plants that were members of the employment managers group. You will recall that that was the period or the beginning of the employment managers activities in the country in Rochester and other cities.

Q And in that capacity were you functioning in behalf of and primarily for the benefit of the employers interests?

A Yes, it was a program to improve the employment practices within the employers group.

Q I am going to go down the list of your various activities, but I will ask you at this time as a preliminary question whether or not such interest and activities as you have had, in which you have participated in employer and employee relations have been representing the employers as distinguished from representing the employees or the public?

A Entirely with employers, except for a short period with the Federal Home Loan Bank Board, and my present capacity with New York State.

Q What is your present position?

A Director of placement and unemployment insurance for New York State, and that is a division in the department of labor of New York State.

A And how long have you had that position?

A Since the enactment of the law, and the position became effective in the latter part of June, 1935.

Q And during the War period were you connected with the United States Army in any way?

A I went, or I attended the first officers training camp at Madison Barracks, and I was in the Army for the duration of the War.

Q During 1900 did you become an officer of the Army?

A I was a Captain of the Supply Service.

Q During 1919 were you connected with any commerce associations?

A The St. Paul Association of Commerce, which is another name for the Chamber of Commerce.

Q And in what capacity were you associated with the Chamber of Commerce?

A In the capacity of assistant secretary, dealing especially with employment management problems of a similar character to those in Rochester, and accident prevention work, and so on.

Q In the course of your connection with the St. Paul Association of Commerce did you become familiar with the progress and practices of chambers of commerce in general?

A Yes, I had previously attended the specialized training course for two years at Harvard Graduate Business School in organization methods.

Q Now, in 1920 were you connected in any way, or did you have any activities in the Cleveland garment market?

A I was assistant labor manager in the winter of 1920 and 1921, shortly after the beginning of the union management cooperative program there.

Q And what were your duties and by whom were you employed?

A I was employed by the garment manufacturers, and my duties were currently to represent the employers in settlement of disputes and the adjustment of claims, and also to assist in the preparation of arbitration briefs to be presented before the arbitrator, that is, Judge Julian W. Mack at that time.

Q Let me go back a moment and ask you what training, college and otherwise, in the field of labor relations, practical and theoretical, you had prior to 1917?

A I had no special training in the field of labor relations prior to 1917. You will recall that the labor management movement and the personnel administration movement started about that time. There were a few prior beginnings in the vocational guidance field and schools for vocational training, but it was in 1917 that this movement started. I was privileged to enter at that time.

Q What college did you go to, may I ask?

A Colorado College and Harvard Business School.

Q At the Harvard Business School the problems, in general, of the relations of employers to employees came within the purview of your study, I assume?

A I am afraid we didn't give much attention to labor problems at the Business School at that time.

Q All right. Then let us get away from that and discuss what you learned in 1920 in Cleveland. As I understand it, you were representing the employeers as labor manager?

A Yes.

Q What were your duties for the employers in your relations with employees??

A Complaints would come to the central office from employers against the activity of an individual union man, failure to cooperate, as specified under the union agreement, or they might come the other way, through the complaint received from the union office in behalf of an employee against whom there had been

alleged discrimination. We went to the plant and adjusted those difficulties. The other phase of the activity I have already mentioned, namely, the preparation of economic briefs.

You asked at the beginning a question which prompts another comment, that this experience with the Cleveland garment industry was my first insight into a cooperative, collective bargaining relationship.

Q Was that cooperative, collective bargaining relationship the result of collective agreements which had prior thereto been entered into by the employers and the workers?

A That is right. They were entered into as a result of bitter strife in the period immediately surrounding the World War, and the determination on the part of the employers and the constructive leadership in the union to do away with that kind of undesirable relationships, and to place their dealings on a cooperative level.

Q Now, did this collective agreement that you have reference to result from negotiations in which the workers were represented by some labor organization?

A Oh, yes, by the International Ladies Garment Workers and the local agents of that union.

Q And in the course of those negotiations were employers represented by any group or association?

A Indeed, this was a collective agreement between two coordinate parties.

Q Both sides were represented by experts in the field?

A That is correct. And they both engaged a firm of engineers to serve them jointly, that is, in upgrading the work conditions of the shops and in getting on a more scientific basis than had otherwise been followed the wage scales and the specific wage rates of the community.

BY MR. CARMODY:

Q Including, did it not, the actual production

standards that were set for the workers, were they not determined by these industrial engineers who were paid jointly by the manufacturers and the union?

A That was done, and it was one of the first and one of the outstanding examples of constructive participation, jointly, in a standard setting process in this country.

Q Was that not done in spite of the fact that before the strike was called, the union had complained that time studies were being used to set standards of production in some of the factories?

A That was true in that case, and it also was a common complaint by organized labor against the stop watch for a number of years prior to that. But it was also true that just as soon as confidence was established through this systematic and judicious organized relationship, they abandoned that fear because they became acquainted with the results of the scientific standards and no longer were alarmed at the possible consequences. They were handled fairly by the joint board.

Q Not only that, but participated actively in setting the standards? Is that true?

A That is true.

BY MR. WIRIN:

Q Now, during all of these affairs were the workers represented by the union?

A Oh, yes, the workers had their president and their officers and their committee with whom we sat, and I spent a great deal of time with the business agent of the union, and I performed the functions, virtually, of the business agents of the employers, and we went to the shops and settled these differences.

Q Did these collective agreements—let us see, was there more than one, or just one?

A There was one collective agreement, representing the three or four branches of the employers in the industry, and there was the dress, the cotton, the suit, and so forth, and also representing the units of the

I.L.G.W., namely, the pressers Union, the operators and the cutters, and so forth, who were all banded together in this common endeavor, so that in effect there was one single representative agency on the part of the workers, and a single representative agency on the part of the employers.

Q Did the agreement provide elaborate machinery for the adjustment of disputes as they arose from time to time during the pendency of the agreement?

A They provided complete machinery, but it was a simple procedure. Having in mind that the industry does not have the complexities of some industries, and keeping in mind also that in this particular community, Cleveland, at this time there was a high degree of confidence on both sides, and therefore there was no need for an elaborate negotiating machinery, we went through the simple procedures of giving notice and presentation of cases, first locally before committees and then before the board or the arbitration board and the arbitrator who was brought in from the outside.

Q Was this machinery designed for the primary purpose of preventing strikes and stoppages of employment and production?

A That was the sole, or the one cause for the agreement, namely, to get away from this expensive and oftentimes bitter controversy involving even bloodshed.

Q Did these agreements expressly prohibit strikes and stoppages during the time that the agreement was expected to run?

A They did.

BY MR. SMITH:

Q May I interrupt? This feeling of mutual confidence that you speak of really arose pretty quickly after the collective arrangement was once started? Isn't that so?

A Yes, it might be likened unto a confession of a sinner who suddenly gets right with his God and goes

in a different direction completely from that which he had been going before. They both had been criminals, you might say, from the standpoint of industrial relationship, and they both realized the futility of that course and that direction in which they were going, and it cost the employers millions of dollars in that relatively small industrial community, and it cost the workers likewise hundreds of thousands of dollars in loss of time, actual loss in dollars to them, because in the meantime the work went to other markets and they were never able to recoup on it. I think your point is well taken, that there was a very sudden and complete reversal of direction on the part of that industry.

Q You mean by that statement that after the entry into these collective agreements, both sides acknowledged that the method of stoppages and strikes was socially harmful and could be eliminated?

A That is correct. And it was effective in that direction. It should be borne in mind, however, that in any complete upturn of the situation such as that was, there were individuals on the employers side who couldn't understand what it was all about, who even to the end of those agreements failed to appreciate the value of them, and likewise the union officials were called upon in many cases to reprimand and keep under disciplinary control their own members, which they did to a very marked degree.

Q Now, I will ask you whether or not from your experience in that situation as an employer representative, the employers participated in any stoppages or violated the adjudications by the impartial machinery?

A I think that there were one or two cases of minor stoppages on the part of employers who reached the end of the rope, as they call it; and likewise, there were a few minor infractions on the part of employees who hadn't yet gotten used to the discipline of a judicial procedure. But those cases on both sides were very minor and very quickly adjusted.

Q What was the score, in terms of strikes and lock-outs and industrial unrest, prior to the collective agreement machinery set up?

A I don't know that my statement on that point can be sufficiently definite to be useful to you, but there was a constant recurrence of strikes prior to the agreement, every few weeks or perhaps every season when the new rates were being set.

Q Did those strikes tie up the Cleveland market effectively?

A Yes, indeed. And there were some shops in the Cleveland market at that time which were distinctly non-union, largely because they wanted to avoid some of the stoppages by virtue of special terms which they were able to reach with their individual employees.

Q In the course of your experience in the Cleveland clothing market, what was your experience with respect to the problem of the competition of the manufacturers in that market with other markets?

A As usual, in the presentation of the employers brief, in that case we presented facts showing that the wage scale which the union wanted to have established might be ruinous to the market and drive the orders to other markets; and also there was the internal threat of driving the work out of the inside shops, the larger shops of the community, to the so-called "outside shops," the smaller sweat shop units—and you must bear in mind that Cleveland was decidedly a large unit town, and only incidentally during did that agreement did they have outside shops, and many of those were registered and kept under control, a condition which was always difficult in the largest competing market, New York.

Q What was the reaction of the employers, as you learned that reaction, as to whether or not in the labor relations between the employers and the employees in Cleveland it was necessary to take into consideration factors in other markets and in other states, with re-

spect to wages in other markets and the existence of collective bargaining in other markets?

A Well, you understand that a wage arbitration case is one in which each side presents its best foot forward, and the economic condition of the Cleveland industry was naturally of serious importance to the employers, and they wanted to have the lowest possible labor costs which they attempted to achieve through these scientific management methods, and also through lower relative wage scales. In these briefs briefs, therefore, they presented evidence to the effect that work was lost to the Cleveland market on account of the wage scales that were in existence, and against those schools which the union was claiming should be put into existence.

I want you to understand that that work was, or that brief that I referred to, was presented with all of the partisanship that two opposing counsels present their case. That is common knowledge in the preparation of briefs of that kind.

Q Did the employers discover that wages were lower in those markets where there was no collective bargaining?

A Wages in Cleveland were higher than in any other markets, whether or not there was collective bargaining, because of the conditions of marketing in that industry. It is a road market community; that is, they send out road salesmen to the cities all over the country, and therefore we have to speak of wage rates relatively. They were always in competition with the outlying communities, such as the Cincinnati market, the Los Angeles market, and the larger Chicago markets, and even in New York, though it was an organized market—New York is a very large city and the amount of garments that could be manufactured under non-union conditions in these outside shops would probably two or three times the amount of the whole production of the Cleveland market; therefore we were not

strictly in competition with the organized labor in New York, but they were in competition with the disorganized production work in these outside shops, and it was through organization that an attempt was being made to standardize and to level up the employment of that community.

Q From your experience did both the employers and the workers acknowledge the necessity of such stabilization and standardization which crossed state lines?

A Yes, indeed, and the result was a guarantee of forty weeks employment during the year.

Q Now, moving to your next experience, were you connected in any way with the printers association in New York City, and if so in what way?

A I was the director of the New York Employing Printers Association in 1920 and 1921.

Q Were your duties similar to your duties in Cleveland, and if not, in what way were they different?

A The duties in the New York printing Industry were broader, and we not only had a defensive program to carry on, such as the current settlement of issues with individual shop disputes and the periodic adjustment of wage scales through arbitration but we also had a program of a constructive character to improve the point of view of the employers in the industry and to bring their staff of people into a more objective frame of mind.

Q Where the master printers organized into any association in New York?

A Yes, they have a printers league section, of which I was secretary, and also an open shop branch, of which I was secretary at the same time.

Q Now, the printers league deals with unions?

A It is a closed shop employers group.

Q And does the open shop group have so-called "non-union" shops?

A Some call it "open shop," but the most part was a non-union shop group.

Q Now, were you at the board meeting this morning when Mr. Fred Silcox, Chief Forester, testified with respect to his experience in the printing industry, as representative of that industry?

A I heard that testimony.

Q Would your testimony be in substantial accord with his, though your approach is that of a representative of the employers and the employers viewpoint?

A Yes, it would. I was a director in the New York market and the New York printing industry at the same time when Mr. Silcox was with the United Typothetae of America in Chicago, and we worked very closely together, and he later succeeded me in New York, and I can concur fully in everything that he said about the printing industry.

Q And is that industry similar to the clothing industry in which you had experience, in its problems of stabilization?

A There are some similarities, but it should be kept in mind that the printing industry is relatively a non-seasonal industry, and that it has been organized for over a century and has ironed out many difficulties which have not yet been solved in the garment industry.

Q In 1922 were you connected with an organization known as "Industrial Relations Councilors, Inc.?"

A In 1922 the organization to which you refer was a unit in the staff of the firm of attorneys Curtis, Fosdick and Belknap, and it was an industrial relations department of that firm of attorneys, and it was later, I think in 1925 or 1926, changed into the organization of industrial relations councilors and incorporated as a non-profit organization in New York State.

Q Were you connected with the organization in its initial and pre-corporate form?

A Yes, I was.

Q And what was your connection with the organization at that time?

A At that time the organization, or the staff of the organization, was small and we made the beginnings of industrial relations, surveys in certain large corporations, and presented therewith recommendations to those responsible in those industries for the up-grading of working conditions and their relationships with their employees.

Q What was the interest of Custis, Fosdick and Belknap to Industrial Relations?

That is a law firm, is it not?

A Yes, and they represented certain financial interests which were interested in making available to their own corporate affiliations, and second, indirectly to other corporations, industrial relations service, which, as I said a moment ago, tend, or would tend to up-grade working conditions and relations between employers and employees.

Q Was there any member of the firm that was more active in this project than any other?

A Raymond Fosdick was the partner of the firm who was responsible for this particular activity.

Q You mentioned certain financial interests as desiring this information and the benefit of this service. What, in a general way, were some of those interests?

A Largely the interests of an individual who is well known, and I think it is common knowledge that it is a fair question and therefore for you to ask, but that is Mr. Rockefeller, Jr.

Q Was Mr. Fosdick for years personal counsel to John D. Rockefeller, Jr. and the various Rockefeller financial interests?

A At least Mr. Rockefeller, Jr. That is correct.

Q And was he also counsel for any other Rockefeller interests?

A Well, I couldn't speak with authority as to the directness of that relationship.

Q But this service that was to be rendered was to be rendered for the various Rockefeller interests?

A In the beginning that was the concept, yes.

Q Now, what industries were studied?

A The petroleum industry and various organizations in the petroleum industry, coal, steel, railroading, and we went outside of the interests of this particular group also to serve the sugar industry, and in some instances the financial interests that I speak of had no connecion with other companies whom we served as counsel in the field of industrial relations.

Q Did you at any time, or were you at any time, director of research?

A I was for several years a director of research.

Q During what years was that?

A 1926 to 1931, and during which years, or during which first year, the research program was started and I was the director of that program from its beginning until 1931.

Q Is it fair to say that your approach to the problems which you were investigating and surveying was in terms of the financial interests who retained the service? I am not suggesting that your conclusions were partial or partisan, necessarily, but with that qualification I will ask the question.

A The work which we did was, obviously, done in behalf of those financed it; nevertheless, the inspiration and the motives were not those which ordinarily accompany a competitive, profit-making, counseling agency. This was a nonprofit agency, and they were devoted, directly and indirectly, to the improvement of labor conditions. You must remember that there were some very unsavory experiences, some of which were referred to by the former witness before your board, that is, the Colorado coal fields in the early part of 1912 and 1913; and as a result of that there was a very definite determination on the part of the sponsors of what later became industrial relations councilors, to remove many of the conditions which brought about those bitter conflicts.

Q You just referred to the 1913 Colorado coal strike. Perhaps you can tell us, if you will, whether or not a so-called "Employees representation plan," which was introduced at the mines of the Colorado Iron and Fuel Company after the strike—will you tell us who initiated the plan and where it was initiated and how it was put into effect?

A The story of that experience has been presented in several documents, and in brief it was that Mr. Rockefeller in person went to the coal fields of Colorado after the Ludlow disaster.

Q Is that commonly called the "Ludlow massacre?"

A Yes.

Q Is that an occasion when so many women and children were suffocated?

A That is the case. I lived in Colorado at that time.

Q At that time was there rather a general and widespread questioning by the general public about the Rockefeller interests?

A There was a great deal of disturbance, and there was a namesake of mine by the name of Bowers, President of the Colorado Fuel and Iron Company at that time—no relative of mine—who was later—who later resigned, shortly after that incidence, and as the next step in the development of employee representation in Colorado Fuel and Iron, Mr. Rockefeller engaged McKenzie King to make an investigation, and as a result of that an employee representation plan was started. You will recall that the Whitney Councils in England—McKenzie King was a Canadian—probably formed the basis for his suggestion that the employees be given an opportunity to express their views and to sit in conversation with the employers on any matter which might affect their working condition.

Q Now, can you tell us what proportion of the stock in Colorado Fuel and Iron was owned by John D. Rockefeller, Jr.?

A I do not know personally, but I have understood that it is more than the majority, considerably more than the majority, at that time.

Q Now, was it after the Colorado strike that Mr. Rockefeller, Jr., engaged or retained McKenzie King to put into effect some kind of an employee representation plan at the Colorado Fuel and Iron Company mines?

A That is correct. McKenzie King did not put it into effect but he merely laid out the principles and left it to the management to install and to follow through.

Q Just to get the picture a little more clearly, if we may, there were also officers of the Colorado Iron and Fuel Company and managers in Colorado, were there not?

A Yes, indeed. They operated the company.

Q I see. And Mr. Rockefeller's interest at that time was as a manager or stockholder?

A That is correct.

Q He was not an officer of the corporation?

A I think not.

Q And he attended no meetings of the company, of the stockholders of the company? Do you know about that?

A I doubt that he did.

Q Now, is it fair to say that Mr. Rockefeller, Jr., after this strike, arrived at the idea of putting in some kind of a plan, and then had the officers of the Colorado Iron and Fuel Company put the plan into operation?

A That is correct. Yes, they did.

Q Now, how many times did Mr. Rockefeller go to Colorado during that period?

A How many times did he go to Colorado?

Q Yes.

A My recollection is two or three times, and that also is a matter of record of those who have written up the story.

Q Outside of his two or three visits to the coal fields of Colorado and the office of the Colorado Fuel and Iron, where was his office?

A In New York.

Q And now, changing the subject for a moment, with respect to the other Rockefeller financial interests, where was the policy, in a general way, both labor and financial, determined? I mean what city or what place?

A The policy with reference to labor relations in those companies was then, to my knowledge—it continued throughout—that vested officially in the officers of the respective corporations. As in most instances of corporate administration they managed the enterprise, and that was no different in the case of the Rockefeller interests, and it is common knowledge, I may say, and it was true in the case of those officers, that Mr. Rockefeller had certain expressed points of view, and they were in print, and doubtless he may have expressed them in person, although there was no dictation to my knowledge, there was possibly an influence, almost certainly an influence, on the local policies in companies which themselves were interstate in character, as a result of these pronouncements of Mr. Rockefeller.

Q Irrespective of whether or not there was dictation, and assuming that there was not, were the policies of Mr. Rockefeller carried out as a general rule, and by and large, by these various financial interests which Mr. Rockefeller had an interest in?

A They were.

Q Could you tell us, just generally, what some of those interests were and what industries?

A Well, they are well known Standard Oil units which were broken up in 1911, and the New York and the New Jersey Companies, and the California Companies.

Q And do these companies conduct business throughout the states of the Union?

A They cover varying areas throughout the country, but all of them are rather large organizations with area operations.

Q Now, in the course of the surveys which you made, and in the course of the experience which you had at that time, did you find that condition which obtained in so far as the Rockefeller interests at all typical of American large scale industry, referring particularly to the experience of where a local manage of plants, or officers of a company, ultimately follow the policy of and in some instances carry out the orders of the heads of the company or major interests of the company in one central place?

A I think that is the general rule, that the official head of the company, or the official officer of the company, or some dominant operating official in the company is responsible for the policies, rather than the stockholders. The instance which is now public property, that which we have been discussing, the case of Mr. Rockefeller, is an outstanding exception, to my knowledge, where stockholders have taken an interest in and determined the labor policies of their various corporations. There are other examples, but they are relatively few.

Q In the case of large corporations whose corporate stock is owned widely by the general public by widows and orphans and middle class people, does the general public, represented by those elements in a community, exercise any direct control over the policies of the corporation, as a general rule?

A I think that as a general rule a stockholder is interested in the investment in the various corporations, and leave it to the management of those various corporations to run the affairs as they see fit, and so long as they produce profits they stay. There were cases—and the rule is always approved by the exceptions—there were cases where individuals and individual stockholders addressed letters to industrial coun-

selors, pleading the interests of their particular locality, and the employees in this particular locality, against their own financial interests, you might say.

Q As a general rule are the stockholders in the large corporations, each of whom owns a small holding, articulate?

A Very inarticulate. There are the cases of the Railroad Security Owners Association, which are articulate, but rarely does any stockholder group or individual stockholders complain or interest themselves in the management problems, including labor relations and their policy and determination.

Q You stated that you have made some surveys of the steel industry, and in this proceeding one of the respondents is the Wheeling Steel Corporation. Assuming that the Wheeling Steel Corporation has a major office at Wheeling, West Virginia, a central office, and then has plants in various states, some of the states of the country, what, in terms of your experience, would be the manner in which the labor policy, as well as the labor relations and fundamental working conditions—how would that be determined for a plant, let us say, in Portsmouth, Ohio?

A The customary procedure is for the top management of the corporation to lay down certain policies and principles to be followed wherever the plant may be located, whether it be in another state or in the state in which the headquarters is located.

Q Assuming there are many plants, how is that done?

A Again, the top management, wherever the headquarters office of the corporation is located, determines basic labor policies, either by positive direction or by acquiescence. After all they can't escape the responsibility merely by failure to act.

There is also a condition which is very general, wherein local conditions may effectuate rates, and they may be different from those in another community, but

inevitably in this modern society in which we live we can not escape the fact that wage rates in other communities must be taken into consideration.

Q Assuming a steel plant in Portsmouth, Ohio as part of the Wheeling Steel Corporation or owned by the Wheeling Steel Corporation, with central office at Wheeling, West Virginia, would the wage scale of the employees and other fundamental and basic working conditions be fixed ultimately by the representatives of the company in Portsmouth, or would it be fixed ultimately by approval of, after consultation with the head man in Wheeling, West Virginia?

A Without comment on any specific conditions in the company which you mention—because I know nothing about them—the management of a corporation similarly situated, if it is at all capable and efficient—and most of them are these days—would interest itself in those wage scales, and in the last analysis determine what it is. I can not conceive of the local manager of a plant in an outlying community settling the issue without at least consultation with the headquarters. I am assuming, of course, that the issue is something of consequence. They would leave all minor matters to the local community.

Q Now, in the course of your experience have you become familiar with various employers associations?

A I have been a member of some, and I think I know about the others through studies that I have made of the history of various types of organizations.

Q Is there an organization known as the National Association of Manufacturers?

A Yes, there is. Organized in 1898, I think.

Q And what are the purposes, in a general way, of the National Association of Manufacturers?

A Well, the National Association of Manufacturers grew out of a situation in 1880 and 1890, wherein we had bitter conflicts, and a number of defensive

employer associations against the inroads of trade unionism, which in that early day involved some amount of sabotage.

Q Do you mean strikes and stoppages?

A Yes, and virtual warfare on both sides, with no moral law controlling them.

As a result of those two decades there was organized the National Association of Manufacturers—at least, I attribute it to the product of thinking in that time, and again as a spokesman for various groups of employers who had previously been allied into individual groups, like the stove founders or like the metal trade employers, that were organized to meet the particular trade situations, trade union situations. And since that time the National Association of Manufacturers has been very conspicuous in their pronouncements in the interest of employers, and they have very definite philosophies.

Q You say it was organized originally as a defensive organization or for defensive purposes. Do you mean defensive against what they consider the growth of trade unionism amongst workers in the country?

A Not only that, but primarily against the growth of trade unionism among workers. Those periods were rife with individualism, and we had at that time very little government interest in labor relations except as sometimes the calling out of the militia to settle the disputes. So it was a case of warfare between the camps of organized labor and organized employers.

Q At the time of the organization of the National Association of Manufacturers was there amongst those who joined the organization rather strong hostility to trade unionism?

A I think that is traditional amongst the National Association of Manufacturers. I doubt that anybody would claim—any of their members—otherwise. There might be a few.

I should mention, that you have gotten the wrong

impression, that the National Association of Manufacturers is not a bargaining organization, and they don't deal directly with anybody.

BY MR. SMITH:

Q There was nothing in the spirit in which the National Association of Manufacturers was organized that in any way resembled this attempt to start a new deal, so to speak, in labor relations which characterized the movement at Cleveland, which you have described, resulting in a collective bargaining arrangement?

A It was quite the opposite, and of course in commenting this way I hope you will understand that we are merely—or I am merely giving voice to historical facts, and I am not impugning their efforts nor commending any of them for what they did, but it is true that the National Association of Manufacturers was organized to give voice to the interests of the employers, the manufacturers, against what they regarded as the inroads of organized labor.

Q Would it be fair to say that the members or the employers who joined the National Association of Manufacturers when it was organized were such employers as refused to bargain collectively with trade unions as representing workers?

A I think that was probably true in the majority of cases, but there may also have been members who were dealing with unions, who of force and necessity wished that they were not—who were members.

Q Now, do you have any information as to how extensive the National Association of Manufacturers now is an organization?

A Well, I don't know their membership, but it is generally regarded, and I think truthfully so, as having thousands of members indirectly and directly. You see, employers are organized throughout the country on state lines as well as on national lines, and those state employer organizations affiliate as bodies with a national organization, or they may be affiliated in

other instances through their officers or through their individual memberships. But however the affiliation, it is the same thing one way or the other.

Q Have you given us an approximate figure in your opinion as to how many members they have?

A I suppose four or five thousand members. And they would be of the larger group, but that is not a fair figure and it is not a credit to the National Association of Manufacturers, because they have, indirectly, through their contacts with these state associations, such as the Associated Industries or Massachusetts and Associated Industries of New York, and similar organizations in other states, many thousands more of employer contacts than these direct members that I have guessed at.

Q Could you give us an estimate as to how many employers there are that are members either of the National Association or of the various state associations?

A Oh, there might be a couple of hundred thousand employers in the country who have, or who are susceptible to organized relationships with other employers. I don't know whether that figure is correct or not.

BY MR. CARMODY:

Q Those figures mean very little. It would be more informative if you could tell something like this: how many employees are employed by members of this Association; and (2) what percentage of the total employees of the United States are thus represented; and (3) what is the total volume of business done by these members of this Association; and (4) what percentage of the total volume of business is thereby represented? I mean in the manufacturing field. I exclude from that the retail field, which I understand they are not interested in, and all of the other fields that they are not interested in.

Then one more thing. If it is available, I think

that the record ought to show whether or not there are other large organizations that absorb in their membership manufacturers who normally would prefer to belong to a functional group rather than this general group of manufacturers—and by that I mean, for instance, the steel companies, generally speaking, belong to, or their officers belong to the American Iron and Steel Institute.

MR. WIRIN: It was not our intention to go into that except for the first few questions that you asked.

BY MR. CARMODY:

Q I wonder, because these numbers standing alone mean very little in a country as large as the United States.

A I should say first that the statements that I make, and estimates, are probably pretty wild guesses and have no statistical reliability, but I would rather speak in proportions, and when you spoke of the membership, I trust you meant the indirect and direct membership, and I should say that the vast majority of the employers who have ten or more employees are affiliated with one or another of these bodies, constituent bodies of the National Association of Manufacturers. They have very effective organizations, and it is very widespread.

As regards the number of employees, again I can only say that it is probably a majority of the manufacturing employees of the country.

Q What about volume of production?

A Again it would be the majority of the country.

Q And the value of the product?

A Again the vast majority, and it is somewhere between 60 and 80 per cent on all of those factors that I have just mentioned. I think that is only a natural circumstance, because we have in this decade or in this century, a very highly developed fetish for organization in the United States, and we are all organized today, organized professionally on one line, or on par-

tisanships along another line; so it would be unreasonable to expect that employers would not be very heavily organized. I think it is a part of our fabric of industrial life.

BY MR. SMITH:

Q Can you tell us the nature of the affiliation between such state organizations as the Associated Industries of Massachusetts and the National Manufacturers Association?

A I don't know whether the organization is still in existence known as the National Industrial Council, but this was a short time ago, at least a couple of years ago, the National Industrial Council, which was made up of the representatives, or the staff members, of the State Associations, that is, the paid secretaries of each state association would be members of the National Industrial Council, which would meet at the time of the National Association of Manufacturers, and in that way at that time they did tie in their experiences and their points of view.

BY MR. WIRIN:

Q Now, do the employers who are members of the National Association of Manufacturers or any affiliated bodies, contribute fees or membership dues?

A I presume they contribute membership dues. I have never been a member of that.

Q Do you know what basis the dues are determined?

A No, except that I suspect it is on the basis of payrolls, or on volume of production, or some general basis of that kind.

Q In other words, a larger manufacturer would pay more than a smaller one?

A I think that is the principle that they follow. Generally that is the principle that is followed by all organizations of employers.

BY MR. SMITH:

Q Is it true that, generally speaking, the member-

ship in the National Association of Manufacturers is one composed of the larger manufacturers?

A I think, compared with certain other employer organizations, the average size of the employer who is a member of the Manufacturers Association is very small. They represent the smaller organizations of the country predominantly. It is true—I assume it is true because I have seen the people at the meetings, representatives of the larger corporations there, but the National Association of Manufacturers speaks the voice of the small manufacturers throughout the country as well as many of the larger ones.

Q Is that because, as Mr. Carmody suggested a little while ago, many of the larger manufacturers in the larger industries are affiliated in occupational groups, that is, the Association is confined to those industries, or is there some other reason, do you think?

A I suspect that the larger corporations are finding other outlets for their programs than the particular program of the National Association of Manufacturers. I don't mean to imply that I understand the larger manufacturers to be outside of the National Association, but when you attend meetings of employers associations throughout the country annually, you see a large proportion of the smaller employers.

BY MR. CARMODY:

Q Isn't it true, if you go back over the presidents of the National Manufacturers Association of the past ten years, you will find that most of them came from small manufacturing plants?

A Oh, yes, they did.

Q John Edgerton is president of a small woolen mill in Lebanon, Tennessee, and he was the paid president for several years, and was succeeded by a man from St. Louis who was in the pharmaceutical business, Robert Lund, another comparatively small manufacturing institution as compared with large steel plants or textile mills. And Bardo, I understand, is now

President, and he came from the shipbuilding industry, a small plant. Isn't that generally true?

A That is true.

Q Generally speaking, the major membership is made up of small and medium sized manufacturers. But I would like to ask one more question there. Isn't it true that an association of that kind must continue to agitate its members in order to continue to have their interest continue to the point where they continue to pay dues, and mustn't they be stirred up by some fortuitous circumstance, like the organization of labor or the outrageous growth of taxation or something of that kind to keep their interest aroused to the point where they remain members and pay their dues?

A That principle which you have expressed is a very common one in practice in all kinds of organizations. Having had something to do with a number of organizations, I might say that the organization manager who doesn't keep things above with new ideas and new this or pro this or against that, soon loses his organization. Inevitably they slide away unless there is activity, and activity means aggressiveness in one direction or another.

Q These organizations support paid staffs called "Experts" or lawyers and economists and industrial relations men and so forth, do they not?

A Their representatives, which attend to the work of the organization.

Q Do you know with respect to this particular manufacturers association that we are discussing that some members of the staff have been there for fifteen years continuously?

A Yes. I don't know that the date of entry of Mr. Emery and Mr. Sargent was, but it was quite a long time ago.

MR. WIRIN: Emery is a lawyer, isn't he?

THE WITNESS: Yes.

BY MR. CARMODY:

Q Do you know whether they make about the same speech every place they go?

A I have never heard in all my experience a more eloquent speaker than Mr. Emery.

MR. WIRIN: I think that that comment is common to all lawyers.

THE WITNESS: Whenever I want an eloquent speech I go and hear Judge Emery. He is very fluent.

BY MR. WIRIN:

Q Let me ask you this, Mr. Bowers. Assuming that it is true that the National Association of Manufacturers is composed very largely of small manufacturers, and that when you attend a meeting the small manufacturers are there attending the meeting in person, is it also true that the large manufacturers tend to dominate the policy of the National Association of Manufacturers?

A I suspect not, in the case of the National Association of Manufacturers.

Q All right. What organizations are there in the various industries that render a service to each particular industry that is rendered by the National Association of Manufacturers for manufacturing in general? And let us take steel first. Is there any association of employers?

A Of course, the trade association grew up of employer organizations that generally do not concern themselves with labor relations. They concern themselves with trade practices. There are, however, some of the trade organizations which do interest themselves in labor policies, and I understand the National Automobile Association to a certain extent does.

BY MR. WIRIN:

Q Tell us what that is, first.

A It is a trade organization composed of the employers in the automobile industry.

Q Was it formerly called the Automobile Chamber of Commerce

A That is, I think, the same organization.

Q And do substantially all or a major portion of the automobile manufacturers belong to it?

A I think that is the case. I must say that I have never had a direct contact with the Automobile Association, and I speak only from general knowledge and by comparison with the same conditions that prevail in other industries and similar types of organization.

Q What about the steel industry, which is involved directly?

A They have an iron and steel institute, which I understand does have a labor interest, and whether or not they have a dominating influence I have no right to say. I do not know.

BY MR. SMITH:

Q Do they have anything like a labor relations section?

A That is my impression, that there is a committee handling the labor interests, and which discusses the policies of labor in the interest of the various companies which are members of the Institute.

BY MR. WIRIN:

Q After the discussion of the policies which the various members of the Iron and Steel Institute should follow, referring now to labor policies, does the Iron and Steel Institute formulate a policy which is then adopted by the industry?

A I regret to say that I do not know that they have done that or that that is a practice. I don't know that the contrary is true.

BY MR. CARMODY:

Q May I ask a question there? Do you know whether or not the National Metal Trades Association concerns itself with labor problems?

A Why, I believe that that is almost their exclusive interest.

Q And that covers that?

A They may have a few isolated interests, but their primary interest is in labor relations.

Q What field does that cover and what trades are covered by that Association?

A It includes the manufacturers who use the products of the steel mills of various kinds.

Q That would be the machine tool manufacturers?

A Yes, and they have a section on machine tooling, and all sorts of manufacturing of metal products are in the National Metal Trades Association.

Q Do you know whether that constitutes a large part of our total volume of manufacturing in this country, metal trades?

A Quite a large part, a large proportion of the total manufacturing.

Q You don't know from census figures what percentage that is?

A I haven't reviewed that.

BY MR. WIRIN:

Q Does this National Metal Trades group, or Trade Association, attempt to formulate a labor policy which is then put into effect by the members of the Association?

A That is my understanding, that they follow that procedure much more definitely than some of the other trade groups.

BY MR. CARMODY:

Q Do they not, as a matter of fact, have an educational program and send their representatives into various parts of the country to teach manufacturers how to run their labor relations?

A Yes, they do.

BY MR. SMITH:

Q Getting back to the Iron and Steel Institute, in reference to this labor policy committee, or whatever they may have in the way of a body that handles labor relations, obviously if the companies belonging

to the Institute are willing to subscribe money to support that form of organization, it is in the hope that the policies evolved by the general group may be applied throughout the industry. Is not that so?

A That is so by presumption, and it is certainly so in many other industries and organizations of the same kind, of which I know. As members of anything we expect to get a good something out of it, and we meet with other people to get their ideas, not merely as an academic interest but to take them home and apply them.

BY MR. CARMODY:

Q I think the record in one of these steel cases, the earlier hearings, will show that the companies are not members of the Iron and Steel Institute, that the Iron and Steel Institute is made up of officers of these companies, and I think Mr. Reed said that he did not know whether the companies paid the dues of these officers or whether they themselves paid their own dues.

I don't think that that whole question has yet been cleared up, as to who pays who, and who belongs to it, really officially belongs to the Iron and Steel Institute. Perhaps that can be done at another time.

BY MR. WIRIN:

Q Now, with respect to the Iron and Steel Institute, do you know whether or not the Institute publishes literature on labor relations for the Industry?

A I have not seen any such literature.

Q Do I understand your testimony—

A May I explain that my activities in the past four or five years have not led me into contact with that particular organization, and therefore I am woefully ignorant about their particular practices, and I can only comment by contrast and comparison with other industries.

Q Well, in terms of your general experience, would you say that there is a growing tendency for in-

dustries, particularly manufacturers, to organize into trade associations, and in programing or in an effort to crystalize and arrive at a joint labor policy?

A The trade association movement reached its peak in the N. R. A. days, and probably it has receded in number somewhat since that time, but there is on the other hand an increasing tendency on the part of trade associations to take or to incorporate into their program of activity, discussions of labor policies, and programs, and educational activities, for the assistance and for the information of their various members.

Q Would you say that in terms of present economic condjtions and tendencies, that a certain amount of the programming of labor policy by trade associations is for their membership, inevitably?

A It is inevitable because labor relations are becoming more and more conspicuous as a problem which deserves attention and as a problem about which something can be done, if approached in the same, or with the same thoughtfulness that other problems of production are approached.

You have asked a number of questions that prompt a summary statement on the whole employer association movement in this country. I suspect that the trade union association movement preceded the employer organizations by about fifty years. The trade unions were organized in the form of beneficial associations around the turn of the 18th to the 19th century, around 1800.

Then, with the flurry of activity in the trade union field in the 30's, and again in the 50's and 60's, leading to the organization of the A. F. of L. in 1881, we crossed about 1880 a certain line of demarcation in the thinking in industry in this country. That is, not only on the labor side, but on the management side. It was in 1881, I think, or 1880, that the American Society of Mechanical Engineers was organized, and that was the first of the management societies, and it was more or less eclipsed as an employer organiza-

tion, and it isn't truly now an employer organization, but it has in its membership men who for the most part work for or with employers, and it was eclipsed in the latter years by this conflict stage of labor relations which I referred to a moment ago.

Q What was the purpose of the American Society of Engineers?

A The American Society of Mechanical Engineers was organized, in other words than those which I used, to advance the science of management, and I have forgotten the technical words that they had in their constitution, but it was to give some crystalization to a science of management, and it was a groping for a science of management which later found expression by Frederick Taylor in the 90's and ultimately by the formation of the Taylor Society in 1910 or 1911.

Q What was that?

A A society for the advancement of scientific management, and the principles of science in management. There was another organization of similar character, the American Society of Mechanical Engineers, that was organized in 1915 or 1916; about that time, those organizations, the three that I have mentioned, and in addition the Personal Research Federation, and to some extent the American Management Association, represent a complete—not a complete shift, but a very substantial shift in direction of thought in management.

It was a trend away from employer management, to a professional management, and the more it became a professional management, the more independent it has become, and it isn't independent, and management isn't independent today, but it is many times more independent than it was ten or twenty years ago.

Q When you say "management" you are referring to the management of the relations between the employer and employee rather than the management of actual production of the plant?

A I mean management of the actual production as well. There is a tendency for management and managers to become more and more independent and more and more responsible in contrast with the owner employer responsibility. And as that has grown, we have seen grow alongside of it this movement for representative government in industry, whether it be trade union government, or the so-called employer representation or company union government. It is a form of openness in the dealing, and I personally think there is a very organic relationship between the management movement and the openness of dealing, and the airing of the facts, or all of the facts, involved in labor relations, and instead of concealment of working conditions, and circumstaces surrounding employment, as prevailed a few years ago, we are increasingly having an openness to the point where there isn't anything that is confidential any more, and if it is kept confidential it is put under suspicion because you wonder why it is confidential.

I am referring to those matters that have to do with labor relations.

Q Now, as a result of the experience with these personnel managers, and the management engineers, or whatever you call them, have had, have these so-called, more or less independent engineers recommended to employers the need of conferring with employees with respect to working conditions?

A Almost universally they have, when faced with the employee problemm, when faced with a labor problem, and true enough many of these did not meet the labor problem, but when they did, they approached it sub-objectively, and from the spirit of open disclosure of all conditions.

Q Now, these are personnal managers, are they generally, in the employ of the employer?

A The personnel managers are a group that works exclusively for employers, that is, the individual man-

ager works for employers, and we want to distinguish between that group and the industrial engineers who are many times in a consulting situation, and many other times are allied with an individual employer.

Q But with respect to the industrial, or the individual management engineer, is he frequently in the employ of an employer?

A Yes, for long periods, and sometimes for many years.

Q Despite that employment by employers have industrial engineers and labor engineers recommended to employers the necessity of dealing with employees?

A Yes, they have. They have maintained a detached position on the matter, and have explained in general that conference and consultations is a far wiser policy than complete secrecy, and determination of conditions by the employer alone.

Q Now, if we may return to the National Association of Manufacturers, tell us what activities the association is engaged in, and let us discuss first, does the association engage in lobbying?

A Well, I have attended hearings where Mr. Emery presented the case of the manufacturers, and I think that using the term in the ordinary sense, they do represent manufacturers before legislative committees in hearings and otherwise interest themselves in legislative—or pending legislation.

MR. SMITH: Mr. Emery is the paid counsel of the Association, is he not?

THE WITNESS: Yes, exclusively.

BY MR. WIRIN:

Q Where legislation is pending which involves the interest of employers as such, and in relation—with respect to employees,—does Mr. Emery generally appear representing the interest of employers through the National Association of Manufacturers?

A He has on many occasions appeared personally, and on other occasions there are assistants who always appear.

Q Do they have a staff of economic and labor economists?

A And legal.

Q And do they appear in favor of or against legislation representing the interests of the employers?

A They represent the interests of employers in their regular legislative developments.

Q Is that true with respect to State legislation as well as Federal legislation?

A The National Association of Manufacturers confines its legislative activities to the Federal Congress.

Q Through the affiliation with State Associations of manufacturers, how does it function?

A In the case of States, the individual State employers organization, such as the Associated Industries, in my own State, take care of the representation of their membership, but for the legislature of the State.

MR. CARMODY: Sounds like Connecticut; is that true?

THE WITNESS: I was referring in this case to New York State.

BY MR. WIRIN:

BY MR. WIRIN:

Q Does the Association hold annual conventions?

A Yes.

Q Does it publish any literature?

A Yes.

Q And is that all literature from the viewpoint of and in the interest of the employers?

A Yes, it is, because that is the nature of the organization. This is a manufacturers' association, and they are organized to protect the interest and advance the interests of their members, so that inherently they do that very thing.

Q Do they discuss in any of the literature labor relations and policies towards labor?

A Yes, they have issued in 1932, and one subsequent year, a platform for American Industry, in which labor relations have a conspicuous part.

Q And does the Association, through its literature and otherwise, seek to influence employers with respect to labor policies?

A The methods of that Association, as well as many other employer organizations, are subject to qualification when you speak of influencing the policies. The membership consists of a certain body of opinion that has a solidarity in the same manner that employee organizations have a solidarity, and therefore when they meet with each other they tend to accentuate each other's ideas, and in that way their conferences and conventions and published material undoubtedly do advocate a certain line of thinking, and certain definite policies with respect to labor relations.

Q If in the question that I asked you, I reframe and substitute the word "guide" for "influence" and ask whether or not the Association attempts to guide its members in labor policy, what would be your answer?

A I don't want to hedge or qualify my remark. The Association is the membership, and the paid staff of the Association is expected to keep the membership informed, and to give it information on which the individual membership can act, and in that way, I presume, you might say that it is a guiding policy.

I ask your pardon for qualifying that so extremely, but it is a method of influencing.

MR. CARMODY: It is to be presumed, I think, that if these companies adhere year after year to the Association and pay it dues, that they expect to get information that will either tell them how to handle their labor problems, or get people in who will help them to handle them.

I think that is to be expected, and they expect that as a part of their return for the investment that they make in the Association.

Is that a fair deduction?

THE WITNESS: That is correct. I want to re-

state for the record that I have never been affiliated directly as a staff member or as a member of the National Association of Manufacturers, and that the information which I have given is derived from my observations and studies, and from literature which I have read, which is available to you.

So that is common knowledge.

MR. CARMODY: But you could not have engaged in the work in which you were engaged in attending meetings all over the country and keeping yourself constantly informed about these relationships without having come in contact with these staff members and their policies, could you?

THE WITNESS: Indeed, I have.

BY MR. CARMODY:

Q Personally?

A Yes, sir.

Q So you are acquainted with many of their activities as a matter of your actual experience?

A I know them. I wanted to register that I am not representing the National Association.

Q I am asking you if you could have carried on your work intelligently without having made those contacts, and without having become acquainted with the more or less specific details of policy of these staff members, as well as the Association?

A I could not. That has been my job.

BY MR. WIRIN:

Q Now, changing the subject to another form of organization, are employers organized in any organization that has for its object industrial research?

A There is the National Industrial Conference Board, which has a research, or which has research at the heart of its incorporation papers. It is incorporated in the State of New York, and I would say it has an extensive program on economic problems which has to do with virtually all aspects of industry and employer interests, and it is not an employer association as such,

although by nature of its membership it is composed of employers.

Q Who pays the bills for the research?

A The membership dues which come from organization memberships, and possibly from individual memberships as well.

They do have primarily an organization membership structure, rather than an individual membership structure, and whether or not there are any individual members at the present time I do not know.

Q And is the research which this conference makes, then made available by it to the members and to the employers?

A Yes. As the name implies, it is a national organization for fact-finding and fact-dissemination. They are the one principal source for research facts, to which the employers go.

Q That is with respect to labor and industrial problems?

A Labor and industrial relations as well, although the studies which they conduct are those which lend themselves to factual presentation, statistical, graphic, and listing of practices.

The intangibles of labor relations are rarely found in the reports of the National Industrial Conference Board.

Q Is the National Association of Manufacturers a member of the Industrial Conference?

A I think that the organization structure of each of the two organizations, N. A. M., and the N. I. C. B., prevents that kind of a relationship.

Q Now, let us turn to the organization known as the League for Industrial Rights.

Is that an organization of employers?

A Yes, the League for Industrial Rights was organized under the name of the American Anti-Boycott Association, in 1901, shortly after the National Association of Manufacturers.

Q Who was its spearhead in organization?

A In that, the individual who is known is Walter Gordon Merritt, and I can't cite the names of the employers who were prominent.

Mr. Merritt is an attorney who has been throughout the history of that organization, its counsel.

Q Now, in a general way, what is the nature of the membership of the organization?

A The membership of the League for Industrial Rights is composed of those employers who have an interest in financing the adjudication of cases having to do with employer rights, and individual employee rights, in the field of labor relations.

Q Would it be fair to say, financing with a view of protecting the interests of employers?

A Obviously so; and there is no other activity than the publication of a monthly journal, and the financing of these cases, and the handling of court cases, and the better known are the Danbury Hatters' case, and the Coronado case, and the Buck Stove case, and others of the same party.

MR. SMITH: You spoke of the League for Industrial Rights as having interest in the rights of the individual employee.

Would you say generally speaking that they tend in their propaganda or their expression of opinion to identify the rights of individual employees with the interests of employers, that is, do they seen a connection there?

THE WITNESS: I think that in several cases, which have been handled by the League for Industrial Rights, that the foundation of the case was the protection of the rights of the individual employee, and in other cases it was the rights of the individual employer.

The core of their legal doctrine is the protection of individual liberty, and I think that that is the summation of the legal doctrine which they espouse.

MR. SMITH: That would be individual liberty as

contrasted, speaking now of employees, with collective action by employees.

THE WITNESS: That is correct, although we must add that there is a place in their philosophy and in their doctrine for certain kinds of legal status for organized contracts, developed in connection with organized labor.

BY MR. WIRIN:

Q Now, when you talk about the interest of the League for Industrial Rights in the individual liberty of the employee, wouldn't it be fair to say that in certain cases in the courts, the legal issue involved was with respect to the rights of an employee, of the individual employee?

A It is a legal issue to which I refer.

Q But of course the primary interest of the Association, manifestly, was not the interest of the individual employee, but the interest of the members of the manufacturers who are members of the Association.

A You are quite right. This is an employers' financed organization, and the use of the case of the individual employee was a means to the end of establishing certain principles which were believed in by the counsel and the members of that organization.

Q And also of safeguarding the interests of employers as the employers saw that interest.

BY MR. CARMODY:

Q The main object was to get the courts to accept that theory of relationship.

A Yes, and they were very successful in achieving that end. The League for Industrial Rights, in so far as any organization could be so called, is the legal arm of the employers in labor relations.

CHAIRMAN MADDEN: In these famous cases, like Danbury Hatters, did this League appear by name?

THE WITNESS: I don't recall a case wherein the League appeared as a party in interest. It was always the case of the individual member of the League, or

even an employer who might not then have been a member, but on whom, or around whom, there was an issue which was of interest to the membership.

CHAIRMAN MADDEN: Do you understand that the League financed litigation of that kind?

THE WITNESS: There isn't any question but what they did.

BY MR. WIRIN:

Q Did the League publicly announce in its releases to the press that it was undertaking and financing these cases?

A I don't think that the League issues releases to the press nor does it issue its publication to the public, but rather, limits the circulation to the membership, although anyone who has a legitimate interest can get a copy of the bulletin.

However, the contents of that publication are limited to a presentation of results of court action in labor cases.

Q Is it generally known among personnel managers, and among representatives of employers, which representative you were for some time, that the League for Industrial Rights finances lawsuits and retains counsel in cases in which the interests of employers are involved?

A Oh, yes, that is generally known. I think that it is fair to say that there must be a sympathetic cooperation on the part of any employer who might seek the aid of the League, so that it might only be temporarily a condition of non-membership.

Q So in a number of cases that have been before the United States Supreme Court, that you mentioned, and in which a particular employer was a party, actually, then, the facts are that although a particular employer was a party to that proceeding, in the course of which the Supreme Court laid down a certain principle concerning the relationship between that employer and his employees, the proceeding was in truth fi-

nanced by a group of employers who had a common interest in the results of the litigation?

A Well, let me explain it this way: Obviously, I have no knowledge, and no one outside of the financial officers of that organization could possibly have a knowledge of that, in answer to that question.

My statement would rather be this: That the League is a membership organization, and it does retain a counsel, and the counsel does handle its cases, and of course, there may be additional expenses in the handling of a case which I would assume would be borne by the individual employer whose case was being defended.

Therefore, it can not be said, and I can not say, pro or con, that a specific case was financed by the League, and not by the employer who was a party at interest, or vice versa.

MR. CARMODY: With respect to whether employment managers, and people doing that kind of work, are familiar with this publication, the witness reminds me of something that I had completely forgotten, that over some period of time when I was doing production and personnel work, a copy of this journal came regularly to my desk, and I never subscribed for it, and I don't know now where it came from, but it came there regularly for a long time.

MR. SMITH: May I ask one question: Do you know whether the membership in the League for Industrial Rights is extensive?

Do you know anything about the membership?

THE WITNESS: I think it is a relatively small membership.

MR. SMITH: Is that composed of small employers, as you say was the National Association of Manufacturers?

THE WITNESS: I do not know. My impression would be that that would be the case, that it is composed of relatively small employers who have a special

and enthusiastic interest in this particular field of activity.

Even though the membership may be small, the influence and interest that that organization has engendered is very wide.

BY MR. WIRIN:

Q Now, are the employers also organized into Chambers of Commerce?

A That is very widespread.

Q Do the employers in cities organize into a City Chamber of Commerce?

A There are local Chambers of Commerce, and there are State Chambers of Commerce, and there is the National or United States Chamber of Commerce, and all or most of them are affiliated.

Q What kind of employers, in a general way, belong to the Chamber of Commerce? Is there any distinction between the membership of the Chamber of Commerce and the National Association of Manufacturers?

A The Chamber of Commerce has a large body of its membership in the retail trade and commerce, and professional trades, and therefore dilutes to a very large extent the manufacturing element in the Chamber of Commerce.

In any active community, in any community where there is an active Chamber of Commerce, the important elements, employer and business interests of the community, are members.

MR. SMITH: You will frequently have in the same large industrial State, as, for instance, Massachusetts, both a State Chamber of Commerce, and an association such as the Associated Industries, one of which covers primarily the people engaged in mercantile business, and the other covering manufacturing.

THE WITNESS: That is generally true. The Chambers of Commerce locally throughout the country, and in the smaller cities, rarely have anything to do with

labor relations, and the larger cities have industrial relations committees, including the Chambers of Commerce of Rochester, and other larger cities.

BY MR. WIRIN:

Q Now, do the Chambers of Commerce locally, in State organizations and nationally, engage in activities similar to the National Association of Manufacturers?

A No, I think that with the exception of the program of the—or the unit in the United States Chamber of Commerce, there is a relatively little activity in the Chamber of Commerce in this labor relations field.

There was for a time, in the 20's, an activity on the part of some Chambers of Commerce in the American Plan Associations, and that conspicuously grew out of Chamber of Commerce sponsorship in Cleveland, and Los Angeles, and certain other cities.

Q What was the avowed purpose of the American Plan Association?

A It was a reaction of employers in the post-war period against organized—or against wide-spread organized dealings of the war period—they were open shop organizations.

Q Was it anti-union?

A Yes, the constitution and bylaws of the American Plan Association reads like a Bible, but its membership was conspicuously composed of anti-union organizations.

Q Was it engaged in an avowed anti-union campaign?

A There was what I understand to be a conscious program to keep the American Plan movement on a local basis, and therefore there was no organization. I attempted to find one to tie them together, but there was only a semblance, a chairmanship, or something of that kind, and they did have meetings, but they kept it strictly on the local basis.

Q Did it ever express itself in many communities?

A All over the country, but not so conspicuously

on the Eastern Seaboard, but principally a Middle-Western and Western movement.

Q Now, are there ever occasions when employers get together and hold special conferences? Or secret conferences that the public doesn't know about?

A Yes, there are, invitation conferences.

Q What do you mean by that? Won't you explain that?

A Well, in New York City, one is invited many times to attend conferences which are not part of a permanent program, and they are sporadic, and there have been conferences in other fields.

Of course, we have had special conferences on safety and accident prevention work, as you know, and there have been conferences on financial relationships with employees, that is, investment programs, and the like, and conferences devoted especially to those subjects, and principally those are held in the American Management Association, and they have held them for years, and there are a few on the subject of employee representation, in the American Management Association.

Q What is the American Management Association?

A The American Management Association is the modern counterpart of the Employment Managers Association, to which I referred a moment ago.

There was a very definite linkage there, in the development of those management organizations. First, there was the employment managers' association, as locally, and then in 1917 in Philadelphia there was an organization called the National Employment Managers' Association, and later it developed into the National Personnel Association, and broadening the interest of the group, and next into the industrial relations, the Industrial Relations of America, again broadening the interest of the group, and finally into the American Management Association, incorporating other

problems of management and labor, but it definitely grew out of an interest in labor relations, and it has continued to be a conspicuous part of the program.

Q As an adviser to employers on labor relations?

A Not as an adviser to employers, but a meeting ground to exchange opinions, and to gain ideas of what other employers in their respective industries have found to be successful from their own particular points of view.

Q Do these secret conferences discuss labor relations?

A Well, rarely is there a closed conference in any organization, and sometimes those conferences, to my knowledge, there have only been conferences on employee representation closed conferences, and those were probably due to the fact that in the earlier years many onlookers would come who would or might from their standpoint, abuse the information that they obtained.

I am speaking of those who attended. I have seen Billy Leiserson, who is a Government official here now, and one of your Boards, at those meetings, and he has addressed them, and yet they have been closed meetings, and they were invitation meetings, rather than secret meetings, and there was no attempt to keep them secret.

Q In the course of these conferences, has there been a discussion of company unions, and their advantages to the employer, and the employee?

A Yes. This group, of course, has in its membership some who deal with organized labor, and collective bargaining, but for the most part it is a group of industry which—many of which have not even yet met the problem of organized labor, and in that state they have promoted the principle of representative government in industry, and they have very definitely done that.

MR. SMITH: May I interrupt to clear up this point? When you speak of these invitation conferences,

and the things they discuss, you speak out of actual participation in such conferences, do you not?

THE WITNESS: Yes, I do.

BY MR. WIRIN:

Q Do they arrive at decisions after conferring?

A No, they are quite open in their methods, and quite frank in the statement that they have been assembled to discuss common problems, and certain individuals would be asked to speak, and they would hold an open discussion, and there would be no conclusion arrived at, and no instructions to anybody.

Q But after the conference is over, is there sometimes uniformity of action by those who attended, or how uniform?

A The pattern in industrial relationships—I mean the pattern of organization both in trade unions and in employee representation programs, the pattern is very uniform, and there are only two or three different patterns, so that when you speak of imitation, or influence, it is in the form of imitation.

Q So that although no conclusion is formulated, and no policy is adopted, as a result of these conferences, a more or less uniform policy does tend to come into existence?

A I don't know. The result of some form of representative government oftentimes grows out of it, and I think the employee representation movement has been advanced a great deal, just as the organized labor has been advanced, a great deal, by the situation, and explanation of those who have had the experience, and therefore those conferences and others of the groups less formal, have tended to increase the principal of representative government.

But when we speak of uniformity, I recall very many radically different points of view expressed in those meetings, but they were mostly to the common goal, that representative government should prevail.

Q When you say representative government, are you referring to what is known as employee representation plans or company unions?

A I include in my own definition of representative government, all forms wherein employees are represented through committees or otherwise.

I have broadened the principle to include not only the trade union group but those which have been called company unions.

Q Now, with respect to the company union—

MR. SMITH: May I ask a question at that point?

BY MR. SMITH:

Q You said a while ago that trade associations generally were showing an increasing interest in the subject of labor relations, did you not?

Did you not also say that the desirability of conferring with employees was one of the things that has emerged as a sort of cardinal principle of any interest shown by employers association, in the field of labor relations?

A That is correct.

Q Is it also—

A Pardon me. With certain exceptions. Some of these things which we have discussed do not sponsor that principle.

Q But there is a trend in that line?

A That is correct.

Q Is it not also true, so far as you know the literature and activities of these employer associations, that such conferences with employees are generally proposed by such associations, on the plant basis, or the employer basis, dealing, that is, with representatives of his own employees, and in general, the inside union as contrasted with the outside union?

A That is predominantly true, and it is again amplified by the occasional exceptions, where a member will express views to the contrary, and advocate trade union membership.

Q Do you know of any employers associations which advocate as a means of arriving at stability and greater justice in labor relations, the adoption of collective agreements between the employers, and trade unions?

A Any employers' organization which has had an experience of collective bargaining, on the level of that which has been described in the printing industry, and in the garment industry, rarely will return to individual bargaining, because they find in this machinery a systematic and organized means for settling what theretofore was a problem of—or a continually recurring problem, and one that never could be settled.

Now, I don't mean to make that statement too sweeping, because there are employers' organizations which have had long dealings with trade unions, on a running fight basis, but just as soon as that relationship settles down to a cooperative level, or a mutual tolerance level, both sides find in it an advantage which they never had achieved before through the catch-as-catch-can relationship of their dealings.

BY MR. WIRIN:

Q Now, with respect to the company union groans which you were discussing, do you know of instances were employers have financed the organization of such a company union, and paid the leaders of the company union for their time in engaging in the activities of the company union?

A The way you put the question, makes it a little bit harder than the facts have borne out, or would bear out.

I would like to answer your question positively in this way: That in the employee representation movement, that was made on the part of the employers, and it was an expression on the part of the employers of a desire to get together.

There have been in more recent years, instances where employees have had their own officials come to employers, in a single company, and say: "Let us get together," but those examples of birth of employee representation plans out of the employee suggestions are not predominant, and I don't think that anyone who is close to the movement would claim that they were employee, in their origin.

Q What is the predominant pattern?

A The employer realizes first that he has not been getting the most out of his relationships with his employees, and he will say to a small committee, "We understand that there is a certain plan over in another company that seems to be working very well. Why don't you fellows investigate it?" and they may give them the names of two or three more companies, or the employees might otherwise have contacts, to find out what those companies were, and oftentimes they send employee committees, and I mean the employees themselves, out of their conferences with the employers, and get the idea that since this is going to be their plan, that it is wise to go and investigate the plans and experiences of their kind in another situation.

They come back and develop one or two or three patterns, which is a shop committee structure.

It may be representation on the basis of plant units or on the basis of functional jobs.

Q May I ask you at this point whether or not these proffers or suggestions by the employers that their workers form a union or a company union of some kind, does that come as a result during the periods of growing or extending union or trade union activities?

A It came predominantly in the war period, and in the depression period.

Q You say the war period—during the period when the Government was recognizing the principle of collective bargaining?

A Yes, as an influence, or a by-product of that trend of thought throughout the country, and furthermore, as a result of the pioneering work which had been done in certain companies in 1914 to 1917 and 1918, and the principle of employee representation began to take hold.

Q Did it grow rapidly up to the time of the world war?

A No.

Q It flourished during that period?

A Yes.

Q Is it true that while the company unions were growing during the world war, and shortly thereafter, that the American Federation of Labor was doubling its membership?

A That is quite so, and in the so-called prosperity period, after the '21 depression, the number of such plans and the growth of the employee-representation, declined, and it appears that it requires some sort of a catastrophe, or great urge, to bring employers and employees into a further recognition of a principle which has long been established.

Q May I ask you whether or not—I will withdraw that.

Do you say that there was a growth of company unions during the depression period? I will ask you if that growth was concommittent with the growth of organized trade unions, and was it as a result of or contemporaneously with the provisions of Section 7 A, which guaranteed the rights to organize?

A That is correct. I think it would be perfectly blind for us not to face the facts that employers, many of them, preferred to deal with their own employees in their own way, and they didn't like the tendency of Section 7 A, and I know of a great many employers who have participated in these employee representation movements, who would very frankly admit that that was the case.

There is complete sincerity on the part of many of them.

CHAIRMAN MADDEN: You gentlemen have both been referring to Section 7 A of the National Industrial Recovery Act of 1933.

THE WITNESS: That is correct.

CHAIRMAN MADDEN: Will you tell us which were the companies that did pioneer work in this field back in the war period?

THE WITNESS: The International Harvester Company, and the Bethlehem Steel Corporation, and the

Standard Oil Company of New Jersey, and the American Telephone and Telegraph Company, were outstanding examples of early leadership on the part of large corporations, following that which I mentioned a moment ago in the Colorado Fuel and Iron Company, to say nothing—which should be mentioned also—the Dennison Manufacturing Company, and Packard A Plan, and the Leach Plan, and so forth.

MR. SMITH: Do you know whether those plans arose, and the experience of those individual companies, or in some of them, following attempts to establish trade union organizations in the companies?

THE WITNESS: I suspect that in all of these cases, the serious threat of union organization was not present. It may have been around the corner, and it may have been in some small unit, but generally speaking, they were in advance of the serious threat of unionization.

BY MR. WIRIN:

Q Would you say that they were in anticipation of unionization?

A Oh, they were ahead of the procession, and very deliberately were setting these plans to clean their house on the inside, rather than to have them cleaned by an outside organization.

Now, that is just facts, and anybody who tries to controvert them is merely hiding what were obvious facts, and many of those employers who sponsored those programs would say as much.

They had a sincere belief that their industry, whenever their employees might be located, would be better handled by their particular type of organization.

Q Now, Mr. Bowers, in the course of your experience, did you find that employees were discharged by employers for their union activities?

A There have been many cases and that practice is a bit antidiluvean compared with the modern personnel procedure. We still have that type of employer in our midst.

Q Would you say that an enlightened employer does not resort to such tactics?

A An enlightened employer is much too far-sighted to believe that he can get away with that sort of thing permanently, and he sees all about him the examples of other groups of systematized industrial relations succeeding in establishing standards which eliminated the disputes.

Q In the clothing industry in Cleveland, and the printing industry in New York, with which you are familiar, after the entry into collective agreements, were discriminatory discharges for union activities, were they problems?

A There were a few cases.

Q Was it a major problem?

A In the Cleveland garment industry there were quite a number of cases where the employers discharged certain employees, but that was in a period of their getting acquainted with an organization problem, but once they became aware of the advantages of playing the game and working on what I have referred to before as a judicious level, they ceased to do that.

Q Now—

A May I say further, that the practice of discharging of employees for union membership does not occur in the stage when a union agreement has just been closed, but occurs in the stage considerably prior to that, when the threat of unionization is apparent.

Q And that is when there is hostility by the employer and refusal to bargain collectively with the union as representing the employee?

A That is correct.

Q And now, assuming that the intelligent employer no longer resorts to the discriminatory discharge, would you say that it is never the less true that it is a frequent practice amongst employers?

A It is a frequent practice among employers who have not attempted program of industrial relationships. Employers who do not have personnel managers,

and employers who do not approach their labor problem from the standpoint of improving conditions.

Q And that represents a very large portion of American industry?

A Very large.

Q So the problem isn't an academic or theoretical one?

A I would say that it is still a minority of American employers who have approached their labor problem, and personnel problem, with the same intelligence, and the same sincerity, or earnestness, that they do their problem of purchasing or plant lay-out, or any other problem. The personnel has been very much neglected.

Q Were you present at this hearing when Mr. Basil Manley testified about the investigations of the Industrial Commission of 1915, and the experience with the National War Labor Board?

A Yes, I was.

Q What is your opinion as to the present existence of the use of the blacklist, by employers?

A The use of the blacklist in its literal sense, namely, the accumulation of a list of undesirable, or so-called undesirable employees, is, to my knowledge, relatively little used in that form.

There is a wider use of a practice whereby, through a clearing house, or through employers dealing directly with each other, inquiring about the standing of this individual, or that individual, and thereby accomplish the same result.

I don't know that my legal knowledge is quite correct when I say that the direct, frank, blacklist is an illegal procedure. That is my understanding; that it is an illegal procedure, and therefore that the practice has tended to take another direction, that of keeping within legal rights, inquiring of the standing of an individual employee, through telephone calls, or other connections with other employers, with whom that employee may have been associated.

Q There is a general resentment among the public in general against the use of the blacklist?

A I think very decidedly so.

Q And the employers began to recognize that?

A And there is a resentment against it in the membership of the American Management Association, of which I spoke.

Q With respect to a large corporation, take the Steel Industry, that has a number of plants, there is some system whereby so-called agitators or other persons in union activities—whereby his record is communicated to the central offices so that other plants may know about it?

A Whether or not that procedure is followed in the Steel Industry I do not know, but it is followed to a considerable extent in the Metal Trades Industry.

Q Now, as a result of the practice in its modern form, as you have explained it, are workmen who are active in union activities discharged because of the information that is secured upon inquiry by that means?

A That is commonly a practice.

Q And does the employer frequently refuse to hire a new employee whose name appears on some other employer's list as having been active in union activities?

A In so far as they are able to obtain knowledge, and in so far as their policy is not to hire union people, that is a correct procedure, and it is often followed.

BY MR. CARMODY:

Q Do you know whether it would be possible to mandamus such a list and bring it out into court so that people might know who they are, and why they are on there, before a public body, rather than have it decided in secrecy of a dark room somewhere, and a man doesn't know them, perhaps?

A I have my doubts that you can find such a list, and get it out into existence; as a matter of fact, when you refer to it as a list, it often doesn't have a physical existence, and it may in some cases, but the manager

of such a program is much more clever these days than to maintain a list, which he can have subpoenaed.

Q We would have to X-Ray some minds to get it?

A I think so.

BY MR. WIRIN:

Q Would your testimony be in substance a—in substantial agreement with Mr. Manley?

A I think it would, as I recall his testimony, and I found nothing in it on that score which would differ from my own experience.

It has been a very undesirable period in our history of labor relations having to do with blacklists, and the same as labor spies, and no one with a modern conception of the personal relationships tolerates them for one moment, and you won't find in these corporations that I spoke of with organized personnel programs, you won't find a use of those practices, in these days.

MR. SMITH: I understand from what you said about the blacklist, that the change in the practice of employers was not a change of heart but a change of technique.

THE WITNESS: Yes; but I am referring at the moment now to a group of employers who have become interested in the improvement of industrial relations and working conditions, through educational programs, and they are not, even though they may not follow the form of collective dealing that others might choose, still they are attempting to do it, country-wide, wherever their employees may be, on a plan that does not generally involve the blacklist, and the industrial spy.

MR. SMITH: Does the situation come down to this, that whatever may be the other motives that inspire employers to stimulate these representation plans and methods of conference, it is their feeling when they do that, that these plans of conference will work out successfully, and that there will be little likelihood that their employees will be induced into outside trade unions, and therefore they fear less what you have several times referred to as the threat of union organization.

THE WITNESS: That is quite true. The broad technique and the broad policy of dealing with mass labor problems has in progressive corporations gotten off of the level of blacklisting and spy work, and on to the level of a positive, constructive program, which has its influence in all the ramifications of their respective industries.

Q You are drawing a careful and clean cut distinction between the practices of what you call enlightened employers or progressive corporations on the one hand, that no longer engage in these methods of discrimination, which you call antediluvean and the practices of other employers who are not enlightened and not progressive.

A That is correct.

Q And is it fair to say that these practices continue among those employers who are not enlightened?

A Yes.

Q And the practice of employing labor spies?

A That does still exist to my direct knowledge.

Q And the use of the modern technique of the black list, and the discharges for union activities and the labor spy do exist too generally in industry, over a large degree?

A I didn't understand your question.

CHAIRMAN MADDEN: Mr. Wirin, do you hope to finish with Mr. Bowers?

MR. WIRIN: Yes, in a few minutes.

BY MR. WIRIN:

Q Now, state whether or not it is the custom of manufacturers to insert in written contracts for the sale of manufactured products, that the agreement is canceled in the event of strike?

A That is a very common clause found in contracts for the sale of manufactured goods, that in the event of disruptions of the plant on account of strikes, or labor disturbances, fire and other acts of God, that they can not be held for violation of their contract.

Q Now, are you familiar in a general way with the provisions of the National Labor Relations Act?

A Yes, I am.

Q I call your attention to Section 8 of the Act, which discusses some of the practices that we have been discussing, and which declares them to be unlawful, and it prohibits employers from practicing them, and I will ask you whether in your opinion and out of your experience as an employer representative, the elimination of these practices defined as unfair by Section 8, would tend to eliminate a cause of industrial unrest and strike?

A It very definitely would tend to eliminate unrest.

Q And also strikes?

A And also strikes.

MR. WIRIN: That is all.

BY MR. CARMODY:

Q I would like to ask one or two things, and the time is limited.

Going back for a moment to your experience with the Rochester Chamber of Commerce, was it or was it not a part of your business there to see that wage rates in the Rochester market were kept pretty much on a level, so that nobody or no manufacturer got out in front, setting a new wage standard that other manufacturers had to follow?

A In those early days, that was not a part of the program and it was not a part of my business. The work which I was doing was interrupted in April, with the war, and only had extended to the stage of study of existing practices and methods in the various plants.

Q Do you know whether or not the Chamber interested itself to see that union organization did not spread in Rochester?

It came in through the clothing industry, but it was pretty much under control in other industries?

A Rochester is a fairly closely-knit community, and the employers and manufacturers are all members of the Chamber of Commerce, and they don't want to have a unionism spread in Rochester.

Q Do you know whether a man who got his training with the Rochester Chamber of Commerce and subsequently went to Los Angeles, Mr. Berry, and developed these practices for the Chamber of Commerce out there?

A Well, Mr. Berry, as I recall, was not on the staff of the Chamber of Commerce of Los Angeles, but was in another organization.

A I am trying to think of the name of it.

MR. SMITH: That was the Merchants and Manufacturers' Association.

THE WITNESS: But it is not the Los Angeles Chamber of Commerce.

BY MR. CARMODY:

Q I was wrong about that. It is the Merchants and Manufacturers Association. You are not familiar with the policy in that organization?

A Well, I know through a conference in Los Angeles that they were following pretty much the same line of interest that the Rochester employers, and for that matter, employers in any other city where they are organized.

Q Would you say that they were even more aggressively anti-union than the Rochester group?

A Well, the Los Angeles American Plan Association was a very active association, and the spirit of anti-unionism is very strong in Southern California.

Q This American Plan that you speak of—

A It died out, and this was an organization which in part took over.

Q That did exist in various cities of the United States, did it not? It existed for several years, and was it not composed of largely manufacturers and merchants who were opposed to the unionization of their employees?

A That is very definitely so.

Q That wasn't discussed much today, and I doubt whether it is entirely dead.

There are evidences in some of our cases that the American Plan is active, and stimulating anti-union activity.

I have one or two more points and I shall be through.

Is it not true that this Research group that you were connected with in New York, which ultimately became the Industrial Relations Counsellors, actually made surveys and investigations of the labor relations or industrial relations and practices of several companies in different parts of the United States?

A That is correct.

Q And is it not true that your organization either sent to these companies or recommended to these companies, that they hire industrial relations men to help develop their industrial relations practices along the line of your survey—the results of your survey?

A That is correct, and they did.

Q Do you know whether or not frequently the local officers of these companies, to whom these men were sent either were not in sympathy with the policy or believed that it on the part of Mr. Rockefeller?

A In some cases, that was very definitely the impression, that it was a gesture, and that he didn't mean what he said in his public speeches, but in due course that attitude was changed.

Q Now, in many cases, then, the policy, the industrial relations policy of these companies, was not initiated by the officials of the company at all, but initiated in a central clearing house, and given to those companies for their good and their general interest?

A Well, they were composed of a service or a staff, which in due course made it possible for them to incorporate these policies and develop these policies in their own organization.

Just one more question: You mentioned sugar, that you made a study of the industrial relations practices in sugar, and where was that study made?

A In the Hawaiian Islands.

Q And you made that study?

A I, and a staff.

Q One more question: As a member of this staff of the Industrial Relations Counsellors, did you have occasion to spend any time in Geneva, Switzerland?

A Yes, as a product of our—a part of our research study, we went into the various subjects, that is, vacations with pay for wage earners, and employment insurance, and we felt that it was not—and our feeling was not at that stage a conscious one, altogether, but these problems needed study not only on a nation-wide we were working deliberately on the program that basis, but on an international basis, because the economies of production and distribution have their inevitable counterparts or effect on labor conditions, and with the growth of and increase of transportation facilities, Europe and America and even the Orient today has been brought closer together than New York and Ohio were together a couple of generations ago, and for that reason we studied these problems as to their practical effect and significance of the movements and trends, on a nationwide basis, comparing the conditions in different districts, and as you have heard me say, on an international basis, so that American industry might be better equipped to maintain higher standards and to build higher standards and maintain them than it would otherwise be possible to do wtihout knowledge of these practices that were developed.

MR. SMITH: Just one more question: Did you attend the invitation conference of the American Management Association held in Chicago several weeks ago?

THE WITNESS: I did not. I was on the program of that conference, but was detained on account of illness.

CHAIRMAN MADDEN: Thank you very much, Mr. Bowers.

We will adjourn until 2:00 o'clock tomorrow.

(Whereupon, at 5:30 o'clock, the hearing was adjourned.)

CERTIFICATE OF REPORTER

"This is to certify that the attached proceedings before the National Labor Relations Board, Fifth Region, in the matter of

Wheeling Steel Corporation	C-3
Jones & Laughlin Steel Corporation	C-57
Crucible Steel Company of America	C-67
(Jennings and Spaulding Works.)	II-R-4

Room 406, Denrike Building, National Labor Relations Board, Washington, D. C., Wednesday, April 8, 1936.) were had as therein appears, and that this is the original transcript thereof for the files of the Board.)

SILLS REPORTING SERVICE

By O'NEAL
Official Reporter.

FIFTH DAY

O'Neal ek

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Washington D. C.

In the Matter of Wheeling Steel Corporation and N. R. A. Lodge No. 155, Goodwill Lodge, No. 157, Rod & Wire Lodge No. 158, Golden Rule Lodge, No. 161, and Service Lodge No. 163 of the Amalgamated Association of Iron, Steel and Tin Workers of North America	Case No. C-3 C
In the Matter of Jones & Laughlin Steel Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Local 200	Case No. C-57
In the Matter of Crucible Steel Company of America, Spaulding and Jennings Works and Strip Steel and Wire Workers Union, Local No. 20084, A. F. of L.	Case No. C-67 II-R-4

406 Denrike Building,
1010 Vermont Avenue, N. W.,
Washington, D. C.
Wednesday, April 8, 1936.

The above-entitled matters came on for further hearing, pursuant to adjournment, at 2 p. m.

BEFORE:

J. WARREN MADDEN, Chairman;
JOHN M. CARMODY, and
EDWIN S. SMITH, Members of the Board.

APPEARANCES:

ROBERT P. WATTS
THOMAS I. EMERSON
A. L. WIRIN
Appearing for the National Labor Relations Board.

EDMUND M. TOLAND
Attorney for the General Council and Departmental Councils of Wheeling Steel Corporation.

PROCEEDINGS

CHAIRMAN MADDEN: Are you ready, Mr. Wirin?
MR. WIRIN: Yes, we are ready to proceed.
CHAIRMAN MADDEN: Very well.

HEBER BLANKENHORN

was produced as a witness for and on behalf of the National Labor Relations Board and, having been first duly sworn by the Chairman, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WIRIN:

Q Give your name to the Reporter, please.

A Heber Blankenhorn.

Q Where do you live, Mr. Blankenhorn?

A Washington, D. C.

Q What is your present occupation?

A I am an industrial economist on the staff of the National Labor Relations Board.

Q Prior to your becoming connected with the National Labor Relations Board, were you interested in the field of labor relations, as an economist?

A I have been a writer on labor-relations subjects for about 20 years.

Q And have you published any publications of any kind or any articles in the field of labor relations?

A Many articles and a couple of books.

Q May we have the names of the books?

A The principal books that bear upon this subject were the Interchurch Reports also a book, "Strike for Unions", published by Wilson Company in 1922.

Q Were you connected with a committee movement or a committee known as the Interchurch World Committee or Commission?

A I was in charge of their field investigations and later acted as secretary of the commission.

Q During what years were your activities with the Commission?

A The commission's activities went from the years 1919 and 1920, on into the middle of 1921.

BY CHAIRMAN MADDEN:

Q How large a commission was that?

A The personnel of the commission, as listed in the Reports, there were seven active members of the commission and two advisory members.

BY MR. WIRIN:

Q Will you give us the names of the members of the commission?

A The chairman of the commission was Bishop James Frances McCormick.

Q Of what denomination or church is he?

A The Methodist Church.

The commission was established to be representatives of various denominations, especially those denominations that were a part of the parent body, the Interchurch World Movement, which was composed of 28 denominations.

Q Subsequent to the commission's work, if I may interrupt you for a moment, did Bishop McCormick become the chairman of the Federal Council of Churches of Christ in America?

A Yes.

Q And can you tell the Board what that council is?

A It represents the council made up of representatives from principal denominations that have established departments of generally what are called social-service departments, and this is a joint council based primarily on the social-service departments of the various churches.

Q And is a substantial portion of the Protestant churches of the United States connected with that council?

A Yes—all the principal denominations.

Q Now, will you proceed and give us the names of the rest of the members?

A The vice chairman was Dr. Daniel Poling, pastor of the Marble Collegiate Church of New York and member of the executive committee of the Interchurch World Movement.

Perhaps I should specify that the committee consisted of the heads of the denominations, the most eminent clergymen and laymen of the churches affiliated with it.

(The hearing was adjourned to room 720.)

CHAIRMAN MADDEN: Mr. Reporter, let your

record show that on account of noise caused by the demolition of a building next door, the hearing was adjourned to room 720, on the seventh floor.

You may proceed, Mr. Wirin.

BY MR. WIRIN:

Q You were giving us the names of the members of the Interchurch World Commission, Mr. Blankenhorn. Will you finish giving us those names?

MR. SMITH: Is that the Bishop McCormick who was bishop of the Pittsburgh area and then later bishop of the New York area?

THE WITNESS: That is the same man. He has written a number of books on philosophical subjects and on economic subjects in the dozen years since he was president of this commission.

BY MR. WIRIN:

Q Is he recognized as an outstanding clergyman of the United States?

A He is.

Q Is that true, also, of Dr. Poling?

A Yes, Dr. Poling, also.

Q Now, may we have the other names?

A Another member of the commission was Dr. John McDowell, of the Presbyterian Church, who has since served as moderator of the Presbyterian Church.

Another member was Mrs. Fred Bennett, then of the Presbyterian Board of Foreign Missions.

The advisory members were Bishop Melvin Bell and Bishop Charles D. Williams, neither of whom participated in the public hearings held by the Commission, but who examined the evidence and signed the report.

Q What religious or church groups, in a general way, were affiliated with the Interchurch World Movement?

A All of the principal Protestant denominations of the country.

Q What was the purpose of the investigation

made by the commission, represented by the personnel whom you have just mentioned?

A A congress was held in New York City in the autumn of 1919, called by the Interchurch World Movement, at which a resolution was passed to set up an independent commission of inquiry to investigate industrial relations in general, and, because of the steel strike that had just been started—because of the steel strike in particular—the commission then conducted a steel inquiry lasting on into the spring of 1920.

Q Did it employ experts to aid in the conduct of that inquiry?

A It hired from the Bureau of Industrial Relations of New York, which was a privately endowed research organization, started during the war at the request of Governmental officers—it hired them, and I, as a member of it, was put in charge of the field work of the commission.

In that work I had under me certain investigators skilled in their particular lines. The list is printed in the report, and I can name them over. One was Joseph Soule, who has since become very well known as an economist and author.

Another was Dr. David Saposs, then well known as a former investigator for the United States Commission on Industrial Relations.

Q Is that the same David Saposs whose position is now industrial economist for the National Labor Relations Board?

A He is the same man, and his study on the "Mind of the Immigrant Communities" was very much quoted then and has been since.

BY MR. CARMODY:

Q What was the name of the study?

A "The Mind of the Immigrant Communities".

BY MR. WIRIN:

Q Did the commission publish a report with re-

spect to its findings and concerning the background and the causes and the facts of the steel strike of 1919?

A The report was made to the executive committee and adopted, after a period of about four months' consideration, and ordered published. It was published in the volume form by Harcourt, Brace & Company, in June, 1920.

Q What is the name of that publication, and the publisher?

A It is "Report on the Steel Strike of 1919, Commission of Inquiry, The Interchurch World Movement," published by Harcourt, Brace & Company, 1920.

Q Thereafter was another publication made in connection with the experiences of the commission?

A In the following year what was called the subreports, made by the expert investigator to the commission and adopted by the commission were published in a separate volume, entitled "Public Opinion in the Steel Strike, Supplementary Reports to the Commission of Inquiry, The Interchurch World Movement", published by Harcourt, Brace & Company in 1921.

Q In answering my question as to the names of the publications, were you referring to two volumes, which are the publications?

A Those two volumes, yes.

Q State whether or not these volumes are considered authoritative, insofar as the steel strike of 1919 is concerned, namely, the history and the causes of the strike.

A I believe they are regarded as standard, and they have been used frequently in economics courses in colleges.

MR. WIRIN: At this time we shall ask the Board to take judicial notice of these two volumes which the witness has described.

BY MR. WIRIN:

Q Now, in the course of your connection with

the Interchurch World Movement, and the investigation which you have described, did you make any investigation of industrial espionage? Just answer that "Yes" or "No".

A Yes.

Q Since that experience, have you made any studies of the existence and the nature of industrial or labor spies?

A Yes.

Q How thorough going, in a general way, has been that study?

A You mean, since the Interchurch investigation?

Q Yes.

A It has been quite intensive in regard to particular cases, most of which have been brought before this Board or preceding Boards.

Q Have you attempted to keep abreast of all current information on the subject of industrial espionage?

A Yes.

Q Now, with respect to the conditions of the steel industry in 1892, with particular reference to the so-called Homestead strike, was there any evidence of the existence of espionage on workers at that time?

A Yes, sir. The existence was brought out in the shape of Congressional investigation, both by House committees and Senate committees, who arrived at the finding—the Senate committee—the finding that the Pinkerton espionage system, which was employed by the Carnegie Steel Company at that time, was—

> "an utterly vicious system, responsible for much of the ill feeling displayed by the working classes."

Q Now, moving on, and referring now to your experience in investigation for the Interchurch World Movement, did you, as investigator for the commission, discover any evidence of the existence of labor spies, at or about 1919, in connection with the steel strike?

A We obtained complete evidence of the characteristics and existence of the system of espionage, in the shape of documents that were given to us, chiefly by one steel company.

Q Please describe those documents and what those documents contained.

A The documents were reports of industrial spies hired by this steel company from two different agencies, principally the Corporation Auxiliary Agency, which is still in existence. I might say that it was not the intention of the commission or the investigators to look for espionage; that the commission had been advised by Judge Gary, of the Steel Corporation, that they had evidence of violence on the part of the steel strikers. We asked for that.

Q Were you personally a party to those conferences and negotiations?

A I was. On invitation of Judge Gary, I asked President Homer D. Williams, who was then president of the Carnegie Steel Company, who assured me that they had abundant documentary evidence of violence, I sent back the investigator 11 separate times for that, and no shred of paper supporting that was procured. The investigator, who was Mr. Robert Littell, then under my direction, then went on to other steel companies asking that same question.

The Pittsburgh Steel Company said, "We have this evidence", and they produced what they called the "labor file" as evidence of violence. This "labor file" consisted of over 600 spy reports, from five or six operatives hired from the Corporation Auxiliary, and letters exchanged with half a dozen other steel companies, including other spy reports.

Incidentially, as I say, none of that yielded any evidence of violence.

Q All right; proceed.

A Then, having in our hands the concrete and very abundant evidence of the operations of the system—

Q (interposing) Let me ask you, at this point, what that evidence consisted of and whether or not that evidence is reported by the commission in its publication.

The evidence can be fully digested with many samples of the reports given, particularly in the second volume, "Public Opinion in the Steel Strike."

It also contains, for the first time so far as I knew, specific evidence of the purpose of espionage, which is blacklisting, as there are included a number of letters exchanged between steel companies to which lists were attached of employees who were not to be rehired. Some employees were specifically named in the letters as being radical people whom nobody would want.

Q Were these people listed in these letters workers who had been active in the unions?

A Yes, sir, active in the unions.

Q Was there any evidence that you or the commission discovered as to whether or not the persons whose names appeared on these lists were discharged for activity in the unions?

A There was.

Q And was there any evidence that persons whose names appeared on the list were not re-hired by other employers in the steel industry? I mean, what evidence was there of the use of the blacklist?

A First, there was the circulation of the blacklist between the companies.

Next, there was evidence in particular cases of men on those blacklists who failed of employment subsequently.

Q Now, at any time did the chairman of the United States Steel Corporation admit the use of espionage by that corporation, at or about that time?

A Chairman Gary, of the board of the Steel Corporation, was questioned by the Senate Committee on Labor and Education, investigating the strike. He was asked by Senator Walsh:

"Have you a secret-service organization among your employees at any of the subsidiary plants of the Steel Corporation?"

He replied:

"Well, Senator, I cannot be very specific about that, but I am quite sure that at times some of our people have used secret-service men to ascertain facts and conditions."

Q Was there an occasion on which some minister published a defense of the activities of the United States Steel Corporation, in which Judge Gary wrote the foreword and approval of the defense, in which the espionage was discussed?

A There was; the statement in the pamphlet read:

"Does anyone doubt the wisdom, justice, and the necessity of a spy on the part of the United States Steel Corporation in sheer self-defense?"

This was prefaced with a commendatory letter by Judge Gary, and was circulated in the number of 1,200,000 copies by the Steel Corporation, according to the statement of Mr. C. L. Close, of the Steel Corporation.

BY MR. CARMODY:

Q Who is C. L. Close?

A He was at that time in charge of the welfare department of the Steel Corporation and acted as a public-relations man, though they did not then dignify him, a press representative, with such a term. The term had not been invented at that time.

Q Do you know whether he was also head of the so-called safety department of the United States Steel Corporation?

A He was primarily responsible for installing it.

Q And do you know whether or not the corporation, through C. L. Close, developed safety committees that made safety inspections in the mills?

A They had a rather elaborate system of it, including drills in it, specific organizations for improving the safety of the mills, and rewards given by the corporation to safety teams in the mills.

BY MR. WIRIN:

Q Did the commission have any personal experience with Judge Gary, in the course of a personal conference, in which there appeared several evidences of the use of espionage?

Yes; the commission, at the request of one party to the strike, undertook an effort at mediation and conferred with Judge Gary, who began the conference by taking from a plain envelope a paper which he began to read to the commission, which turned out to be an anonymous spy report attacking the commission. This was traced to its source by the fact that it was circulated elsewhere.

Q Did this report purport to give a description of the persons who were members of the commission and characterizations of their opinions and social activities?

A It was an attempt to describe the commission and its personnel. It was totally inaccurate—illiterate, in fact, in part—and nevertheless Judge Gary insisted on discussing it with the commission.

Q Now, did the commission have a similar experience at a hearing before one of the committees of the United States Senate?

A Subsequent to the publication of its report, it was invited by the Senate Committee on Labor and Education to discuss the recommendations of the report before that committee.

A Senator, at the start of the hearing, laid on the table a document which charged that the report of the commission as published was written by an entirely different man. This document was in the shape of a report circulated by the secretary of the Ohio Manufacturers Association. It contained the same anony-

mous spy statements that had earlier been refuted and for which the Ohio Manufacturers Association had apologized for the circulation of it.

Nevertheless, that again was taken up by the Senate committee and had to be answered there in an analysis which is included again in the report of the commission.

Q Subsequent to the 1919 steel strike, and subsequent to the publication of the report and the findings of the Interchurch World Commission, and up to 1934 or 1935, let us say, is there any evidence of espionage during that period?

A Up to—?

Q Up to 1933, let us say.

A Yes; there was published in 1928 a booklet called "Spies in Steel", which contained an extensive series of records in photostatic form of the espionage system of the Oliver Mining Company, a subsidiary of the United States Steel Corporation.

Q Who was the author of that publication?

A Frank L. Palmer, of Denver, Colorado.

Q Was that published by the Labor Press of Denver, Colorado?

A That is it.

Q Is that publication considered an accurate and authentic and authoritative discussion of labor spies in industry?

A No attempt was ever made to refute or even to contradict the analysis. The facts brought out there in the analysis have often been quoted as a careful digest, coupled with a first-hand investigation and report, of that system.

Q In your opinion, is it accurate and reliable?

A It is accurate and reliable.

Q Now, what were, in brief, the findings of Mr. Palmer with respect to the existence of labor spies? Or, perhaps, I will reframe that broad question by asking you a series of questions:

In terms of Mr. Palmer's investigation and findings; how were spies hired?

A They were recruited from among the workers, whether in the unions or not, and whether in other labor organizations or outside. The process of recruitment is described in full in this analysis. It varies, but it generally follows a line which is fairly definite.

First, there lies back of it this fact, that a very full account is kept in the Oliver Mining headquarters in the shape of a personal history of workers. The document given there show records made on workers; that is, the photostate copies are given, that extend over five years, and a number of them refer back to events in the lives of the workers that go back much further than that.

Q What kind of events or activities by the workers are referred to?

A First and foremost, any organization that he joins, the exact date at which he joins it, the exact date on which he pays his dues.

Q Does that include labor organizations?

A Labor organizations and also such organizations as the Farmer-Labor Party.

Q Is that considered by some employers as a so-called radical party?

A It was in Minnesota at the time so considered.

Q Now, what other information is reported?

A Contributions made to any labor organization, subscriptions to a labor paper, letters written to a labor paper, letters written to another worker, if intercepted, and an exact history that may follow along, as in particular cases cited there, for years—and the exchange of those with designated officials of the Illinois Steel Company and of the Carnegie Steel Company of Pittsburgh.

Q Now, the persons who were recruited as spies, you say some of them were workers. Were some of them officers of labor organizations?

Q A number of them were.

Q Was there any evidence of a postal carrier being a spy?

A A postal carrier, and barber.

Q A hotel keeper?

A A hotel keeper, and secretary of a musicians' union, and especially there are several example of union officers who happened to be members of several different organizations.

BY MR. SMITH:

Q Several different labor organizations?

A Several different labor organizations. That is a well-recognized thing in regard to those who are hired for espionage purposes. Their instructions are to join as many organizations as possible, and this is brought out by this investigation.

BY MR. WIRIN:

Q Now, when these spies make a report, to whom did they make the report?

A The report is sent in an envelope to a local boss, to a lock box, which, as revealed there, is in a fictitious—three lock boxes in fictitious names, and Mr. Palmer was able to verify that officers of the Oliver Mining Company opened those boxes and took the spy reports out.

Q. Now, what happened to the report after it was taken out from the box?

A It generally went to such designated officer there, whose names are given. And ultimately—

Q (interposing) Officers of the Oliver Mining Company?

A Of the Oliver Mining Company, and ultimately to the assistant to the president, a Mr. Pray.

Q Was all of this information recorded on cards, as to each employee?

A The information was recorded on cards, according to the photostat samples given there, and included, at the time, the penciled notations indicating that a member be discharged.

Q And were the men concerning whom information about their labor activities was gotton were these men actually discharged?

A He named several.

Q What evidence was there of how much money these spies received as compensation for spying?

A $125, $150 a month.

Q Would that be in addition to such compensation as the worker would earn at his regular work, assuming that he was that kind of a spy?

A Yes.

Q Now, what evidence is there of the present existence, in 1936—or between 1933 and 1936—of labor spies?—with particular reference, at first, to the steel industry?

A In 1933 there was laid before the NRA steel-code hearing personal testimony of a visit and investigation of the headquarters of Mr. Charles W. Cuttle, of the Carnegie espionage system, by Mr. Palmer. Since that time—and I might sum up quickest—

MR. SMITH: Excuse me. This Mr. Palmer is the author of the book you mentioned?

THE WITNESS: Yes. He submitted evidence of continued espionage there, from his personal investigation, disclosing photostatic cards in the headquarters of Mr. Tuttle in the Carnegie Building, spy reports there on his desk, that were discussed by him with Mr. Tuttle—so that the system was then in existence in July, 1933.

BY MR. WIRIN:

Q Now, Mr. Blankenhorn, one of the parties in this proceeding named as a respondent is the Jones & Laughlin Steel Corporation. Do you have any evidence of the existence of industrial espionage at the premises and plant—or at one or any of the plants—of this company?

A In the record of the hearings before the National Steel Labor Relations Board held in Pittsburgh,

November 17, 1934, on the complaint of Beaver Valley Lodge of the Amalgamated Association of Iron, Steel & Tin Workers against the Jones & Laughlin Steel Corporation, pages 196 and 197, I find a record of the cross examination of Superintendent Harry Saxer.

Q Is that in a proceeding before the National Steel Labor Relations Board?

A In a public hearing before the National Steel Labor Relations Board.

Q Do you know who presided at the hearing?

A Judge Stacy.

Q Is that Judge Walter Stacy, of North Carolina?

A Yes, as chairman of the board, presiding.

Counsel for the company were Earl F. Reed and Roy G. Bostwick.

Q Do you know whether or not these are the same, or whether that is the same Mr. Reed who was the attorney for the Jones & Laughlin Steel Corporation in this proceeding?

A That is the same Mr. Reed.

Q What does that transcript show?

A It shows an admission of the existence of an espionage system.

I can read this. The question was simply asked:

"In your own duties do you have also general charge of your espionage system?"

MR. CARMODY: That was asked by whom?

THE WITNESS: By Charlton Ogburn, counsel for the union. The question was:

"In your own duties do you have also general charge of your espionage system?"

The answer was:

"I have general charge of the plant."

Q: You have excellent espionage system?

"A: We think we have. We try to be efficient."

BY MR. WIRIN:

Q Now, let me ask you whether or not you made a

copy of the matter which you just read, and of the material pertaining to this inquiry, from the official transcript in the custody of the present official in charge of the records of the National Steel Labor Relations Board?

A I did. This is that copy.

Q And is that a correct copy of that testimony?

A It is a correct copy.

Q And is that official record in the possession of the custodian of the records of the National Steel Labor Relations Board?

A It is.

MR. WIRIN: We will offer in evidence as the Board's exhibit next in order the paper entitled "Espionage in Jones & Laughlin Steel Plants", just identified by the witness.

CHAIRMAN MADDEN: It may be admitted.

(The paper referred to was received in evidence and marked as Board's Exhibit No. 48, Wheeling Steel Corporation; Board's Exhibit No. 92, Jones & Laughlin Steel Corporation; and Board's Exhibit No. 37, Crucible Steel Company of America.)

BY MR. WIRIN:

Q Now, another respondent is the Wheeling Steel Corporation. What evidence is there of the existence of espionage at any of the plants of that respondent?

A At the Portsmouth plant there have been two outstanding examples of espionage, one implanted and discovered, and the other attempted.

Q What are the facts pertaining to that?

A One concerns the secretary of the joint council of the Portsmouth Lodges, J. P. Harris, who, in the summer of 1934—

Q (interposing) Lodges of what union?

A Of the Amalgamated Association of Iron, Steel & Tin Workers.

Q Yes.

A (continuing)—was approached by a man who introduced himself as J. C. Boyer, of New York, presenting credentials—which he said were credentials—from New York. His conversation with Mr. Harris, which consisted chiefly of an offer which would take him out of town on a job, was interrupted by the calling-in of other union officials. Mr. Boyer departed, leaving an address, which was Post Office Box 166, Cleveland, Ohio.

One year later Mr. Boyer again appeared at the Portsmouth Plant and definitely offered Mr. Harris a job out of town. Two days afterwards a P. W. Wilson, professing to represent a newspaper system in Washington, offered Mr. Harris a responsible newspaper job in Washington, and, leaving left as an address Post Office Box 1661 Cleveland, Ohio.

Q Was Mr. Harris active in the work of the Amalgamated Lodge?

A He was the outstanding leader and his presence was essential to the functioning of the joint committee of the lodges.

Subsequently, within the past two months, another approach was made by Mr. Boyer to discuss an offer of a job. Subsequently, also, Mr. Boyer was identified, not as a New York man, but as an operative employed by the Railway Audit & Inspection Company's special industrial service, of Pittsburgh.

Q What is that service, in truth?

A That is well recognized as a professional espionage and strike-breaking organization.

Q Now, is there any other evidence of espionage at the Wheeling Steel plant at Portsmouth?

A In the summer of 1935 a man who said he was a steel worker, and named Alfred R. Kinlow, approached the officers of the lodges, presenting a withdrawal card from an out-of-town Amalgamated Lodge, and requesting and wanting to know where he could

find the union officers, and wishing to attend the union meetings; which he was permitted to do until it was discovered that his credentials were false, by checking back with the lodge from which he was supposed to come. He was thereupon barred from the meeting.

Subsequently he managed to produce other credentials and was permitted to attend the meeting, at about the same time that Secretary Harris happened to obtain a letter from a union in Youngstown stating that Kinlow was an operative of the National Service, Incorporated, of Youngstown, and that he had with him a list, which list was given, consisting of the seven principal officers of the union, whom he was to contact and eliminate, if possible, from the union activities. This list was read at the meeting, and Secretary Harris already had a committee escort Kinlow from the hall.

In leaving, Kinlow's comment was: "Well, this has happened to me before." He was requested to leave town at once; in fact, he was put into an automobile just ahead of five auto loads that came form the union in pursuit. The union officials said that they did not want any murder committed, and they facilitated his getting out of town.

Subsequently, Kinlow—whose real name was Wolnik—was traced to Terre Haute, where he is still an operative of the National Corporation Service.

Q What is the true nature of that service?

A That was a recognized espionage and strike-breaking agency.

Q In your opinion, is the use of espionage in the steel industry widespread?

Q It is very widespread.

Q Now, are the same methods of espionage and black listing which you have described used in other industries?

A There have been statements in behalf of transportation, stating that that is so; for example, the

statement of W. W. Atterbury, of the Pennsylvania Railroad, before the Industrial Relations Commission of 1915, that they employed the Pinkertons, and there always was a spy system and there always will be one until a better method is found of handling industrial relations.

BY MR. CARMODY:

Q A better method than what?

A He does not say, sir.

BY MR. WIRIN:

Q Now, could you let us have the names of some of the better-known agencies that specialize in furnishing labor spies?

A The Railway Audit and Inspection Company, which has several affiliates; the Central Industrial Service, of Pittsburgh.

Q Are there agencies who specialize in rendering that kind of service to employers?

A There are and have been for years, some of them with a continuous service running through many years. Notably, there is the Pinkerton Agency.

Q How long back in American history does that go?

A Back to the Civil War. I think the Pinkertons themselves say 80 years, and they have been in industrial espionage since just after the Civil War.

Q You were giving us a list of them.

A Corporations Auxiliary, International Auxiliary, William J, Burns, A, A, Ahner, Forrest E. Pendleton; those are some of the chief systems. Altogether I have a list of over 200 such agencies in this country.

BY MR. SMITH:

Q How about the Baldwin-Phelps Agency? Is that still active?

A The Baldwin-Phelps Agency, according to reports made to the United Mine Workers, in the last few months, is still active in parts of southern West

Virginia, the Winding Gulf area, as far as coal is concerned. They are also active in the middle west in general industry, but not as much as they used to be.

BY MR. WIRIN:

Q Did you say that industrial espionage in industry, outside of the steel industry, for the purposes of this question, is widespread?

A It is widespread in the auto industry.

Q What other industries have more espionage than others?

A That is a little difficult to say. I would say this, that a classification of employers, known employers of espionage, covers practically every large industry; every large industry is represented.

Q Now, in the course of your investigation with the Interchurch World Commission, did you talk to workers and discuss with them their problems and their attitudes?

A Yes.

Q And have you since been in contact with workers and discussed with them their reactions?

A Yes.

Q What have you found to be the state of mind of the worker, or the reaction of the worker, to espionage and black-listing and discharges resulting therefrom, which you have described?

A I hardly know of anything that in general deepens the resentment that arises in labor conflicts more than the feeling by the worker that there is systematis secret espionage being practiced in his ranks, coupled with the threat of what are known as armed strike-breakers, usually from the same agencies as supply the espionage. The result is a great intensification of bitterness in case there is any sort of dispute.

Q Please state whether or not this bitterness which you have described is a factor in or a cause of strikes?

A Yes.

Q Now, are you familiar with the literature on the subject of industrial espionage?

A Yes.

Q And will you let us have the names of the publications that you consider authoritative and authentic?

A I have here a short list which deals primarily with the steel industry. In addition to the two that I gave you, "The Labor Spy," by Sidney Howard, published by the Republic Publishing Company in 1924, as regards steel, on pages 1 to 42. I may say that that is the summary of the investigation made for the Cabot Fund in 1919 or 1920, and investigation of industrial espionage undertaken at the request of Professor Richard Cabot, Professor of Social Ethics at Harvard, really to carry further the investigations that became public in the Interchurch Report.

The results of this report are in four typewritten volumes and were summarized by Sidney Howard, the chief investigator, who has since attained considerable eminence as a playwright in this country—in fact, I think his name is nationally known.

Q Is he the same Howard who collaborated with Sinclair Lewis in the production of some of Sinclair Lewis' books into dramas?

A That is the same Sidney Howard.

Q What other literature is there?

A "Spies in Steel"; I have given you that. There is one written by Harvey O'Connor, "Steel—Dictator", published by the John Day Company, New York, 1935, especially pages 274 to 278.

Q Does that last book which you have mentioned bring the subject up to date, up to 1935?

A It does.

MR. WIRIN: We shall ask the Board at this time to take judicial notice of the publications which Mr. Blankenhorn has listed.

BY MR. WIRIN:

Q Mr. Blankenhorn, have you made summaries with respect to the existence of espionage which you have in your possession?

A I have made a summary of the relations between espionage and the prevailing labor policy in the steel industry since 1892, based in considerable part upon the minutes of the executive committee of the Steel Corporation as made public for the period of 1901.

Q The paper which you have just handed me, does that represent the results of your experience and study in the field of industrial espionage?

A As relating to steel, yes.

MR. WIRIN: We will offer that as the Board's exhibit next in order.

CHAIRMAN MADDEN: It may be received.

(The paper referred to was received in evidence and marked as Board's Exhibit No. 50, Wheeling Steel Corporation; Board's Exhibit No. 93, Jones & Laughlin Steel Corporation; and Board's Exhibit No. 38, Crucible Steel Company of America.)

BY MR. WIRIN:

Q Now, have you also made a special treatment of the material which apepars in the book by Frank Palmer which you have been talking about?

A Yes; I have made a digest and sample excerpts from it.

Q State whether or not that publication is now out of print.

A That publication is now out of print.

Q And this material which you have just handed me which is called "Disclosures of a One-Man Investigation," does that contain a fair summary of the material which appears in the book by Frank L. Palmer, which you have been discussing, called "Spies in Steel",

as well as a statement by Mr. Palmer at the Steel Code hearing?

A It does.

MR. WIRIN. We will offer that as the Board's exhibit next in order.

CHAIRMAN MADDEN. It may be admitted.

(The paper referred to was received in evidence and marked as Board's Exhibit No. 51, Wheeling Steel Corporation; and Board's Exhibit No. 39, Crucible Steel Company of America.

BY MR. WIRIN:

Q Now, have you made a summary of the findings of the Interchurch World Commission with respect to the existence of espionage in connection with the 1919 steel strike?

A I have.

Q And have you just handed me that summary?

A That is the summary.

Q That is a fair trial and, to the best of your knowledge, an accurate summary of the findings of the commission on the subject of espionage?

A It is.

MR. WIRIN: We will offer that as the Board's exhibit next in order, being entitled "Interchurch Investigation, 1919 to 1920".

CHAIRMAN MADDEN. It may be admitted.

(The paper referred to was received in evidence and marked as Board's Exhibit No. 52, Wheeling Steel Corporation; Board's Exhibit No. 95, Jones & Laughlin Steel Corporation and Board's Exhibit No. 40, Crucible Steel Company of America.)

MR. WIRIN: That concludes my questioning.

MR. SMITH: Is it clear to you, Mr. Blankenhorn, from your numerous studies in this field that the principal object of the co-called industrial espionage system is to keep track of the labor activities in labor organizations?

THE WITNESS: To keep track of and to influence and, if possible, to control.

MR. SMITH. And is it generally recognized by the workers that the existence of an industrial espionage system does mean just that sort of thing?

THE WITNESS. That is precisely the way they feel about it.

MR. SMITH. So that the effect of the knowledge that such a system existed on the mind of the average worker would be to intimidate him from joining or assisting a labor organization, would it not, in all probability?

THE WITNESS. That is it. Nothing creates a wider and more general fear than the belief that there is a secret system operating among them to identify those that are active in unions.

MR. SMITH. And you know that from personal conversations with the workers?

THE WITNESS. From personal conversations with workers, and from investigations for many years back.

MR. CARMODY. Did you ever encounter a man named Charles Woodward, who was with the Hydraulic Press Company in Cleveland?

THE WITNESS: No, sir.

MR. CARMODY. Did you ever hear of his work as a private detective before he became the employment manager for that company?

THE WITNESS. I don't think I have.

MR. CARMODY. You do not know whether he was one of the organizers of the so-called "American Plan" that started in Cleveland at about the time of the war?

THE WITNESS. I can not place that name.

MR. CARMODY. Have you indicated approximate-

ly how many of these undercover men or spies there are in American industry?

THE WITNESS. There is no estimate to be made that has been made that I would consider as really reliable. You could state certain bases for a minimum estimate which, on calculations that I have made, would run at least forty to fifty thousand.

MR. CARMODY. In view of the secrecy with which they operate, is it possible to take a census of them with any degree of accuracy?

THE WITNESS. It would be an extremely difficult thing, which could be done in only one way, which would be by having the lists of the detective agencies themselves; and that would not be certain, as aliases are a very common thing among them.

MR. CARMODY. Do you know whether the Census Bureau in its effort to make a census of the various professions and trades and classifications of citizens, makes any effort to get a census, a reasonably accurate census, of the people who are engaged in this spy system?

THE WITNESS. I think there is on covering of that class in the census.

MR. CARMODY. Where are these men recruited from?

THE WITNESS. There are two general classes of recruits. The higher paid men, those who you might say come up in the business, are those who make it a profession, and not infrequently are found to be recruited from criminal classes. They have been in various forms of crime, and they return to it; that is, a number of the experts have criminal records. Then the recruitment of the ordinary stool pigeons is often accomplished through the insertion of blind ads in the newspapers.

MR. CARMODY. What do you mean by "blind ads?"

THE WITNESS. Ads that ask you to reply to a box number rather than to see a specific person.

MR. CARMODY. Those ads appear among the help wanted columns?

THE WITNESS. They appear among the help wanted columns and they do to this day, and I have records of recent interviews by honest workers who answered those ads and have turned up at such offices as the International Auxiliary, in New York, and the National Corporation Service, in Youngstown, in answer to those ads, where they quickly discover what is desired of them is espionage.

I rather hastily gave that minimum estimate, and I would like to add that I might give the basis on which that is found.

MR. CARMODY. Yes.

THE WITNESS. It has been found by numerous tests, that the statement that there is a spy or stool pigeon in every local union has been found to be true in certain local areas where tests have been made, notably in Cincinnati and in Philadelphia.

It is sufficiently true that there is in a certain sense a sort of axiom among labor unions that, as one president of a large railway brotherhood put it, he never knew of a group large enough to be called a meeting that was not small enough to include a spy.

If, then, you take this estimate to apply to every local union, there are some 33,000 locals directly affiliated with the American Federation of Labor; in the International some 1,700 others, and about 8,000 independent local unions—and that is over 40,000.

And if you want to take into consideration the fact that most of these agencies always have a stool pigeon to check on a stool pigeon, you quickly would be compelled to double your estimate.

MR. CARMODY. Do you know whether, with reference to these men and also with reference to strikebreakers who are recruited only occasionally and sporadically as a demand for them exists through strikes, do you know whether they have any other employment

to sustain them, or do they live entirely off this undercover spy work and espionage?

THE WITNESS. I think that is a principal means of sustenance for a considerable class.

MR. CARMODY. Well, if several thousand men are recrited from, as you said, the underworld, many of them having criminal records, to break a strike, and then they are released suddenly, what do they go back to?

Do they go back to their former employment and some former livlihood, or do they go back to the criminal underworld again?

THE WITNESS. They do not go back to any sort of steady employment.

MR. CARMODY. Yes.

THE WITNESS. That is a known characteristic of them. That has happened and been known, that at the close of a strike, effort has been made to retain strikebreakers, but they do not desire and do not accept steady employment. When they do so, it is an exception.

MR. CARMODY. Do you know whether anybody else has made any study of that to follow through to see what happens to them and to ascertain whether they become connected with any criminal activities?

THE WITNESS. Not on a national basis.

MR. CARMODY. Did you mention this book by Levinson?

THE WITNESS. I did not mention that.

MR. CARMODY. What is that book? I have heard of it, but I have not read it. What is it?

THE WITNESS. I have carefully studied that book and seen a considerable amount of the original document and of the newer sources of that book's information. While it has a somewhat sensational title the title being "I Break Strikes," the technique of Paul L. Berghoff, it is a very sound and carefully discussed statement of a particular phase of this labor detective busi-

ness, which is the strike-breaking side rather than the espionage side.

MR. SMITH. I just wanted to ask you, Mr. Blankenhorn, if you can name one or more agencies which conduct industrial spy departments as well as furnishing strikebreakers and armed guards?

THE WITNESS. Pinkerton, Burns, Railway Audit and Inspection, Corporations Auxiliary, and the International Auxiliary does it also.

Berghoff specializes in strikebreakers almost entirely and espionage hardly at all.

MR. SMITH. And in a sense each of those functions supplements the others from a business point of view? That is, from a detective agency's point of view? That is the industrial spy, in addition to finding out what is going on, naturally, within the unions, sometimes stirs up activities which his concern may be called upon to check later? Is that not so?

THE WITNESS. In the Cabot report—that is, the Sidney Howard summary of it and in the original reports—various examples are given, with a discussion of cases where a single operative put in has resulted in the instigation of disputes and the instigation of the very trouble that they were supposed to combat, even to the instigation of violence.

There are numerous specific examples of the instigation of violence for the express purpose of obtaining a court injunction in a strike, in which the operative of a detective agency was in some cases arrested and found responsible for it.

BY MR. WIRIN:

Q I have just one more concluding question, which is this:

Mr. Blankehorn, you have already testified that from your experience the use by employers by espionage and of discharges and the blacklist, which accompanies espionage, tends to lead to labor unrest and to strikes.

Let me ask you whether or not the prohibition of

these practices by law, particularly by Federal law, by prohibition of employers from interfering with the rights of workers to organize, whether or not such prohibition would tend to eliminate those causes of unrest and the strikes caused by those practices?

A I think it would.

MR. CARMODY. You spoke of the fact that some men make a profession of this work. Do you know whether they have an association? Lawyers have a professional association, doctors have a professional association, and so do engineers have one. Do you know whether or not these men who make a profession of their work have such a professional association?

THE WITNESS. I never knew of any that did. The nearest that I ever saw of an example of that was the picture and report in the press at the time of the elevated strike of New York, where I believe about 20 of them were reported as having attempted to form a strikebreaker's union. They so picketed with placards, and that is the first time I ever heard of an association of that kind.

MR. CARMODY. I am speaking particularly of those organizations like Pinkertons and Bergdoff's and Baldwin-Phelps—those whose names have been mentioned here. Do you know whether or not they undertook to make a code of fair trade practice, when all of the other businesses in the United States got into the code-making spirit? Did you hear of any such activity?

THE WITNESS. If they did it, it escaped me.

MR. CARMODY. You don't know whether or not they had a code or a fair trade practice group?

THE WITNESS. No, I do not.

MR. CARMODY. That is all.

MR. WIRIN. That is all.

(Witness excused.)

MR. EMERSON. Now, Mr. Saposs.

DAVID J. SAPOSS

was produced as a witness for and on behalf of the National Labor Relations Board and, having been first duly sworn by the Chairman, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EMERSON:

Q Mr. Saposs, will you give your name to the reporter?

A David J. Saposs.

Q Where is your residence, Mr. Saposs?

A Washington, D. C.

Q What is your present position?

A I am chief industrial economist for the National Labor Relations Board.

Q How long have you held that position?

A Since the 15th of December.

Q Will you state, briefly, what your training and experience has been in labor economics?

A I have specialized in labor economics since 1911, when I finished my undergraduate work at the University of Wisconsin in various capacities.

The first job was as research assistant to Professor John R. Commons, when we were working on the history of labor in the United States, which was financed by the Carnegie Institution of Washington.

I then was one of the special investigators of the United States Commission on Industrial Relations, in 1913 and 1914.

MR. SMITH. Pardon me, Mr. Saposs. When you refer to working on the history of labor in the United States, you refer to those two volumes published under that name, do you not?

THE WITNESS. Yes, by Commons and Associates, published by McMillan in 1918.

MR. CARMODY. As a matter of fact, is that not

considered the most authoritative history of labor in the United States?

THE WITNESS. Yes; it is considered a standard work in that subject in the United States.

BY MR. EMERSON:

Q Will you state what the United States Commission of Industrial Relations was?

A The United States Commission of Industrial Relations was created by the Government to study industrial relations in the United States. I was one of the special investigators who traveled with the Commission, helped write one of the reports and made a special field study of company towns.

Q Were you also connected with the New York Department of Labor?

A I was with the New York Department of Labor as an expert, in charge of accident prevention and industrial service work.

Q In what year was that?

A That was in 1917 and 1918. And I worked with the Carnegie Corporation, administrative study, during 1918 and 1919, in which I studied particularly the relation of immigrants to all forms of labor organizations.

In 1919 I was with the Interchurch World Movement, engaged first as one of the investigators on their entire field strike inquiries; and later in charge of their industrial studies section, which was the division that had charge of industrial studies that were made in connection wtih various church organizations in different parts of the United States.

Q Did you participate in the report of the Interchurch World Movement on the steel strike in 1919?

A Yes.

Q That is the report which has been mentioned several times through this hearing?

A Yes; and I was also connected with Columbia University, both in the capacity of lecturer at various

times as well as a research associate, and when the Univeristy undertook a very extensive study of post-war social and economic conditions of France, I was engaged in that. A group of us were sent to France to carry on the study of that in that country. I was in charge of the labor division. This study was financed by the Laura Spelman Rockefeller Fund, which has since been absorbed by the Rockefeller Foundation.

Q Were you also connected with the Twentieth Century Fund Study?

A Yes; I was a research associate of the Twentieth Century Fund, which made a study of the role of the government in labor relations and which was published in book form, entitled "Labor and Government," by McGraw-Hill, in 1935.

More recently I was the director of the company union study of the United States Department of Labor.

Q Was that study published in any form by the United States Department of Labor?

A Two articles have appeared in the Monthly Labor Review, and it is contemplated to issue the study in bulletin form sometime this summer, I believe.

Q Now, will you state the names and dates of publication of any books dealing with labor economics of which you are the author?

A I have written a book on "Left Wing Unionism", published in 1926.

I have edited a book called "Reading in Trade Unionism" published in 1927.

I have written a book entitled "The French Labor Movement Since the War", published in 1929.

And I have collaborated in a large number of other books as co-author.

I have also contributed a large number of articles various scientific publications, such as the American Economic Review, the American Journal of Sociology, and so forth. And I have contributed to some encyclopedias, like the "Encyclopedia of the Social Sciences,"

the "American Dictionary of Biography," and to such reference books as the American Year Book, published by the New York Times and edited by Albert Bushnell Hart, of Harvard.

MR. CARMODY. Those two works, the Dictionary Biography and the History of Social Science, are considered monumental works, are they not, in their particular fields?

THE WITNESS. Yes, they are.

MR. CARMODY. The result of very considerable scholarship—I mean the effort of a very considerable number of scholars in those fields?

THE WITNESS. Yes.

BY MR. EMERSON:

Q Mr. Saposs, will you state whether or not you, or your staff under your supervision, have made a study of the causes of industrial unrest and the effect of industrial unrest upon interstate and foreign commerce?

A Yes, we have.

Q Now, I will ask you first to take the period comprising the years 1886 and 1887, and ask you to state what strikes or other labor disputes occurred during that period and what effect they had upon interstate commerce?

A The period of 1886 and 1867 is a period of extraordinary labor activity. It marks the culmination of efforts of the workers to organize, who had just been introduced into the now established factory system, so that most of the organized labor activities of this period were attempts to organize in order to secure collective bargaining.

In a table on strike statistics, which we have compiled from the material issued by the United States Department of Labor, we find that during this period, in 1886 there were 1,572 strikes; in 1887 there were 1,503 strikes. Whereas, from 1881 to 1885, which was the period immediately proceeding on which figures are

available on strikes, the largest number of strikes was 695 strikes.

So that we have here a period which is a peak in so far as the history of such strikes is concerned. The strikes that occurred vitally affected a large number of industries, and a great many of these strikes, of course, occurred simultaneously, so that the effect upon commerce was very significant. I will enumerate a few of the strikes.

Q Before you go into that, is it your testimony that the majority or the greater part of these strikes arose over efforts of employees to organize and resistance by employers to prevent organization?

A This is the period when the workers had suddenly become conscious of their status and had begun to organize. Most of the workers who were active in labor organization and in strikes during this period had not been members of labor organizations before, and therefore the prime issue was this organization for the right to carry on collective bargaining, which the employers, of course, were resisting.

I might say that in the year 1886, the offensive was largely on the part of the workers who were just organizing and who were demanding union recognition. They succeeded in a great many cases in securing recognition in 1886; and in 1887 the offensive was taken by the employers, who felt themselves by that time sufficiently well prepared to now break the relations that they found themselves necessary to enter into with their employees in 1886.

So that in both cases, of course, the issue was this question of the right to organize.

MR. SMITH. How long before these events was the American Federation of Labor established?

THE WITNESS. The American Federation was organized in 1881. It, however, was not an organization of great importance at this time. The organization was regarded as the dominant and the important labor

organization was the Knights of Labor. The Knights of Labor was involved in these strikes more than the American Federation of Labor, although officially the Knights of Labor did not call these strikes. As a matter of fact most of the strikes were spontaneous strikes, sort of an assertiveness on the part of the workers who felt the need of an organization to protect their interests and join the first organization that came to their attention, which happened to be, mostly, the Knights of Labor, because it was the outstanding organization.

BY MR. EMERSON:

Q When you say the employees took the offensive, you mean they took the initiative in demanding the right to bargain collectively?

A Yes; that was the prime reason why they would organize or strike, because the employers refused to deal with them and so they had no choice but to go on strike.

Q Would you state the major strikes which occured during this period?

A I will just enumerate a few of the strikes. One of the outstanding strikes was in the McCormick Reaper Works in Chicago, in 1886.

Q Excuse me. In listing these strikes, will you state, where the data is available, the number of employees involved and the duration of the strike?

A Yes. In most of these strikes there is no data available giving the number of workers.

MR. CARMODY: D you know whether or not that McCormick Reaper Company later became a part of the International Harvester Company?

THE WITNESS. It was the nucleus that formed the International Harvester Company at a later period.

At this time, of course, that was the most important manufacturing concern producing reapers, and they were sold, of course, all over the United States, and particularly in the mid-west, where harvesting was done

on a large scale—wheat harvesting and so one, so that they shipped reapers into all the important agricultural areas of the country where harvesting was done through machinery.

There was a railway strike known as the Southwest Railway Strike of 1886, which tied up all the railroads running south and west of Saint Louis, and was a very momentous strike in the sense that it actually crippled all traffic. For a considerable time there was no movement of freight at all.

Then there was a knitters strike of 20,000, which started October 16, 1886, in the State of New York and ended in May, 1887.

There was also a coal handler's and longshoremen's strike in New York City which involved 28,000 workers and lasted from January 1, 1887, to February of that year.

The outstanding strike, however, during this period was the general strike of May 1, 1886, in which 198,450 workers were involved. They tied up production in all the major cities of the United States for from one week to three weeks. In such cities as Cincinatti, for instance, Milwaukee, Chicago, and New York, and so on, production was very largely tied up in this strike.

BY MR. EMERSON:

Q Production in what phase?

A In all branches; there was a general strike for all industries so that production was tied up in all branches of industry and pretty largely crippled. This strike is popularly known as the 8-hour strike, but of course the real issue was the right to organize. The labor leaders, however, used the 8-hour issue as a means of tying the workers together and bringing them into the organization; but the prime issue was the one of the right to organize for collective bargaining.

MR. SMITH. That probably was also used, the 8-hour designation, to get popular support?

THE WITNESS. Yes, it was no doubt used to get popular support.

You see, these workers who had not been accustomed to working in factories in the past, who had been recruited from the agricultural and the rural areas of the United States, were faced, under the rigid discipline factory life, with the average hours of 10; and naturally they wanted to reduce the hours if they had to remain factory workers. Therefore, that issue was a popular issue. But it was an appeal to unorganized workers who were just forming themselves into unions.

Another important strike was the strike of meat packers. As a matter of fact, there were two strikes in the meat packing center of Chicago, one in 1886, which was won by the unions, and then in 1887 where the meat packers turned the tables on the workers.

So that period of 1886 to 1887 was one of intensive strife, a period of organizing the workers so that they could act through their own organizations.

BY MR. EMERSON:

Q Do you know whether or not the meat packers strike tied up the flow of commerce in the meat packing industry?

A It practically crippled the whole industry. There was very little production going on either in 1886 or in 1887. And hence, of course, very little shipment went into the yards or come out of the packing houses.

Q These strikes which you have mentioned all occurred within the period of two years?

A Two years. And the Department of Labor estimates that during the year 1886 alone some 601,469 workers were involved, just in that one year, the known figures for 1886. There were no figures for 1887. Figures for the number of workers involved in strikes have been collected systematically only recently.

Q Now, taking as another sample period, Mr. Saposs, the period from 1901 to 1905, will you state how many strikes occurred during that period and list the

major strikes which occurred and the effect of those strikes on interstate commerce?

A The table which I have, entitled "Number of Labor Disputes in the United States," shows that beginning with 1901 and running to 1905 there was an extraordinary increase in the number of strikes as compared to the years from 1888 up to 1901.

In 1901 there is recorded 3,012 strikes; in 1902, 3,240 strikes; and in 1903, 3,648 strikes.

Then there is a slight drop in 1904, the number of strikes being 2,419; and in 1905, 2,186.

Q Will you state the source of those figures?

A This is from the United States Department of Labor, and the exact source is given in the table.

Now, the years from 1888 to 1900 show a much smaller number of strikes. The largest number of strikes during any years from 1888 to 1900 was over a thousand, just over a thousand. The number for 1899, which was the largest, was 1,838.

Q In the majority of those years, however, there were more than a thousand strikes in each?

A Yes—more than a thousand strikes. But whereas in the succeeding period which I am discussing now, every year has more than 2,000 strikes, and three out of those five years have over 3,000 strikes, the largest in the previous period was the 1,838.

Q Do those figures of the United States Bureau of Labor comprise definitely all the strikes which occurred during that period?

A It is all an approximation. Of course, the exact number of strikes, it is very difficult to locate; but is the number that they have been able to get a record of.

MR. CARMODY: Would you call that an approximation? Is that not a compilation of reports covering specific strikes?

THE WITNESS: Yes.

MR. CARMODY: You do not mean to say that you have all of that there?

THE WITNESS: No.

MR. CARMODY: But that there are at least that many, and more that the Department of Labor did not hear about?

THE WITNESS: Yes. The Department of Labor acknowledges that there were strikes that it does not happen to get a record of. But it did succeed in getting a record of this number. Of course, they made a conscientious effort to get a record of all strikes, but they don't have the facilities to get all of that information.

MR. CARMODY: These figures are not put together on the basis of an estimate, not on that basis?

THE WITNESS: No.

MR. CARMODY: And they are supposed to be strikes actually reported to the Department?

THE WITNESS: Yes, strikes that they actually have a record of.

BY MR. EMERSON:

Q Did they keep any records at that time of the number of employees involved in the strikes?

A No; the United States Department of Labor made no effort to secure information on the number of employees involved in strikes until 1919.

Q At that time it was the Bureau of Labor, was it not?

A The Bureau of Labor Statistics came into existence in 1886, I believe, and was incorporated into, first, the Department of Commerce and Labor, and later on, of course, into the Department of Labor, when that was created.

Q And in what year was the Department of Labor created?

A In 1913, I believe. It was during the Administration of President Wilson.

Q Now, will you give us the major strikes which occurred during the period 1901 to 1905?

A One of these was a strike of Machinists in the major cities, which involved 58,000 workers and which occurred in May of 1901.

Another one of the strikes was of steel workers, involving 46,000 workers, from July 1 to September 6, 1901.

And another strike was of meat packers, again, in 1904, involving 49,600 workers in major cities directly, and some 12,000 workers indirectly. This strike lasted from July 12 to September 8.

The strikes which attracted the greatest attention—there were two strikes that attracted the greatest attention at this time—were the anthracite coal strike of 1902, which was called on May 12 and lasted through October 21, and which involeved over a hundred thousand workers and tied up production in anthracite coal so that the consumers of that coal located, of course, throughout the United States found it difficult to obtain anthracite coal and had to rely pretty largely on coke and, to a limited extent, on soft coal.

MR. CARMODY: At that point, do you know whether or not as a result of that long strike, that the anthracite coal industry permanently lost a considerable part of its market to other fuels, first to bituminous coal and subsequently to fuel oil?

THE WITNESS: I have read about it.

MR. CARMODY: You do not know?

THE WITNESS: I do not know from any study of my own knowledge.

MR. CARMODY: Do you know from your knowledge from reading that not only were there a hundred thousand men involved, but that business in the whole anthracite area, which was an important area in Pennsylvania, was completely crippled during that whole time?

THE WITNESS: Yes; it is true, of course, relying entirely for their whole commercial life upon the miners, that those towns were seriously affected and there was very little business done by the auxiliary businesses, like baker shops, grocery stores, barbers, and so on, because they had no income.

MR. CARMODY: And, of course, the railroad tonnage was considerably reduced?

THE WITNESS: Oh, yes. There was practically no movement of coal. The industry was almost entirely tied up.

MR. CARMODY: And the railroads were affected by that?

THE WITNESS: And the railroads lost, of course, a tremendous amount of business. Their chief business, of course, or the chief business of those railroads operating from there, of course, was in the hauling of anthracite coal.

Another strike which attracted a great deal of attention but which did not directly involve a very large number of workers, was the strike of teamsters in Chicago in 1905, lasting from April 12 to July 20, involving only 4,238 workers. This strike, however, because it tied up the people who do most of the hauling from freight yards and warehouses and so, crippled commerce, both in Chicago as well as commerce that is shipped out of Chicago. So that while a very small number of workers were involved, it is regarded in the history of strikes as an exceedingly important and vital strike.

MR. CARMODY: Do you know whether or not at that time there was any other means for getting such commodities through the streets to and from the local freigh houses?

THE WITNESS: The only means that there were was that the Marshall Field has an underground railway that carries freight from the freight houses to its warehouse.

MR. CARMODY: That services only a small part of the City, the Loop District?

THE WITNESS: Yes, sir, only the Loop District.

MR. CARMODY: Do you know that there were no automobile trucks on the the streets of Chicago at that time?

THE WITNESS: Well, most of the trucking at that time was teaming.

MR. CARMODY: So that a teamsters strike would really cripple the whole city.

THE WITNESS: Yes, would cripple the whole city.

MR. CARMODY: To a much greater extent than it would today, there or any other city?

THE WITNESS: Yes; that was the only means of general trucking the city at that time, and since it was exceedingly effective, it tied up this great railroad center.

Of course, Chicago is still the largest railroad center of the United States, and it was even a more important railroad center at that time, and this strike, of course, interfered with the movement of commerce in and out of Chicago, which is of course a very important manufacturing area, also.

Those are the strikes in this period of 1901 to 1905.

MR. CARMODY: Did the United States Bureau of Labor or the Department of Labor, when it was created, keep figures of the number of strikes and other strike statistics during the period of 1905 to 1916?

THE WITNESS : No, during the period between 1905 and 1916 there are no strike statistics available. And then, beginning with 1916, they again began to issue strike statistics. This period of 1916, at that time there was again a period of a very large number of strikes, and we also have here, of course, beginning with 1919, the number of workers involved.

MR. SMITH: Mr. Emerson, may I ask just one question about that 1901 to 1905 period of strikes?

Did any considerable number of those strikes involve recognition of the right of the employees to bargain collectively as an important cause, do you know?

THE WITNESS: Yes; in a great many of these strikes later on we have the statistics on the causes of the strikes, in which we see that there were a large proportion of strikes in which the major issue was the right to organize for collective bargaining or for union recognition, as it is technically known.

BY MR. EMERSON:

Q Taking the period from 1916 to 1922, can you state the number of strikes which occurred during that period, based on the figures compiled by the Bureau of Labor Statistics?

A This is another one of these periods of intensive and extensive activities, organizationally, on the part of the employees of the United States, and we find in this period a very large number of strikes.

In 1916 there were 3,755 strikes; in 1917, 4,436; and then a slight diminution beginning with 1918. The effect, of course, of the National War Labor Board on strikes did not show itself until 1919, as you remember from the testimony of Mr. Manly. In 1916, of course, we were not in the War yet, and you see a slight diminution in the number of strikes in 1918, and then an increase—

Q (interposing) Did you state the number for 1918?

A Yes, 3,344. Then there was an increase in 1919 to 3,630; a slight decrease in 1920 to 3,411; a rather marked decrease in 1921 to 2,385; and a more marked decrease in 1922 to 1,112 strikes.

Q Do you have figures in the number of employees involved in strikes during that period?

A We have the figures on the number of employees involved in strikes beginning with 1919, which was the time when the United States Bureau of Labor Statistics of the Department of Labor started collecting figures.

This is only the number that were reported, involved in labor disputes. There were undoubtedly a large number of workers involved; but this is the number that they were actually able to tabulate on the basis of reports that came in.

They found there that the year in which the largest number of workers was involved in strikes was in 1919. Even up to the present there has been no year in which

that number has been reached, or even come very near to it. That was 4,160,348 workers involved—and that is not the complete number.

Now, there was a considerable drop in the succeeding years, as follows:

In 1920, 1,463,054; in 1921, 1,099,247; in 1922, 1,612,562; so that during this period of four years there is a record of over 8,000,000 workers having been involved in strikes, and there were undoubtedly a larger number of workers involved, since the record is not complete.

These were the workers that were directly involved in strikes, and it does not include the workers that are always indirectly involved in the sense that, as industry is tied up, other occupations and other industries and other services also cease to function.

So that we had here during this period a most extraordinary accumulation of simultaneous strike movements which undoubtedly very vitally affected the movement of commerce in the United States.

MR. CARMODY: I don't wish to extend the record unduly or to ask you to speculate. But is it not true that 1919 was the year after the signing of the Armistice? Is that not true?

THE WITNESS: Yes.

MR. CARMODY: And is it not true that during the two or three years of extremely high production; when the War Labor Board and other similar bodies were functioning, a great many men were able to join labor organizations under the more or less protection of the United States Government?

THE WITNESS: Yes, sir.

MR. CARMODY: And is it not true, as a matter of labor history, that after the War was over, many employers who under the need for protection had previously agreed to it, undertook to destroy these labor organizations and withdraw from these working people the right to belong to labor organizations that deal collectively through those organizations with their employers?

THE WITNESS: Yes.

MR. CARMODY: Does that not account for a considerable number of those strikes in 1919?

THE WITNESS: This was a period when the largest and most expensive open shop campaign was launched throukhout the United States for the organized employers, with the avowed intent of breaking up the unions that the workers had succeeded in organizing during the War when the National War Labor Board functioned and protected them in the right to organize themselves for collective bargaining.

BY MR. EMERSON:

Q I am not sure in what year you have made clear that this open shop movement began.

A It began immediately after the Armistice in 1919, and it ran on through 1922, when it was most effective. It continued a little later, but it was most effecive during this period; and the employers were organized, as was explained by one of the other witnesses, locally in this open shop movement, which of course means anti-union movement.

MR. SMITH: This was the so-called "American Plan" movement?

THE WITNESS: This was the so-called "American Plan" movement, as one of its names, and millions of dollars were spent by employers in order to break up the unions that the employees were successful in organizing during the War period when under the protection of the War Labor Board they could organize for collective bargaining.

BY MR. EMERSON:

Q Would you say, then, that the larger number of strikes occurring after the War arose directly out of this open shop movement and out of the efforts of the employers to break the unions?

A Very definitely so. The great majority of the strikes occurred as the result of this attitude of the employers; and the employers, I might say, were success-

ful, especially in the important industries were large scale production is carried on through integrated firms, and they were successful pretty largely in eliminating unionism—such industries as meat packing, steel, and electric manufacturing—

Q (interposing) We will go into that in just a minute.

A Yes.

Q To what extent did you say the strikes previous to the open shop movement were due to efforts on the part of employees to organize? Or were they due to disputes over wages and hour questions?

A Well, we have the figures here, that there has always been a very large proportion of strikes for the right to organize. That proportion grew in certain periods, and usually it grew in these periods of intensive assertiveness.

Q Well, we will go into those figures later.

A Yes.

Q Now, would you state the principal industries in which major conflicts occurred in this period?

A One of these was in the important meat packing centers, particularly in the Chicago Stock Yards, in which 45,000 workers were directly involved. Another one was a strike of—

Q (interposing) Do you know how long that strike lasted?

A I believe about six weeks; I do not have the exact figures here.

MR. CARMODY: Do you know whether or not it was in that strike that Judge Althouser, who resigned in the last week or so from the Circuit Court of Appeals, acted as arbitrator?

THE WITNESS: Well, during the War the workers in the Stockyards, including the meat packing houses, organised and, through the intervention of Secretary of War Newton Baker, they established a machinery somewhat similar to what has been known as the Impartial

Chairman Machinery, with Judge Althouser as the arbitrator in charge of that machinery.

Now, that machinery functioned up to this strike of 1922, when the owners of these big meat packing companies declared an anti-union policy, and refused to deal with the union any further.

There was, also, the matter of wages; that is, they introduced several wage decreases and so on. They refused further to recognize the authority of Judge Althouser, because they said the War was over, and so on, and this precipitated this strike of meat packing workers.

Immediately following thereafter some of the very firms introduced company unions.

BY MR. EMERSON:

Q Can you state the extent to which operations and commerce in the meat packing industry were interrupted by that strike?

A In the Chicago district—I was then living in Chicago and had an opportunity to study the strike first hand—the industry was very seriously crippled in the Chicago Stockyards District—not tied up completely but seriously crippled. It was also violently affected in East St. Louis, Illinois, and Kansas City, Kansas, and in Omaha, Nebraska. Those are the important centers.

Q Those are the important centers of the meat packing.

A Of the meat packing industry, yes, and this strike affected the production very seriously in all those centers.

Another strike of importance during this period of 1916 to 1922 was the Atlantic Coast Shipping strike, in which the International Seaman's Union and the Marine Beneficial Engineers' Union were jointly involved. It tied up shipping from Maine to Texas—at one time actually tying up three hundred vessels that ply along the Coast.

Q And in what year was that?

A I don't know that I have the figures handy. I think it must have been towards 1921, I believe. This was all after the War; I know that. But I don't have the figures. There were two—

Q (interposing) Just a moment. Could you state the duration of that strike, and the causes?

A The issue there, of course, was again the question of recognition, as one of the issues, and then there was a question of wages. Both of those were pretty closely linked together.

Q Do you know how long that strike lasted?

A I don't recall, no.

In the garment industry there were two important strikes, one in the men's clothing industry, involving about 40,000 workers and lasting over five weeks; and the other one in the ladies garment branch, involving some 60,000 workers.

Then there were other strikes, like in electric manufacturing—

Q (interposing) Can you state the causes of the garment strikes?

A The causes there were primarily wages, although in the garment industry, as was explained by one of the witnesses, because of the small employers every strike is an organization strike.

However, the prime issue was reduction in wages.

There was a strike in the New England textile are at this time, and a strike in the electric manufacturing industry. And then, of course, there were two industry-wide strikes, one of them the general strike of the coal miners, including both anthracite and bituminous coal miners and thereby involving close to half a million or more workers. This one instance where there was a general strike of both branches of the coal mining was rather unusual. Usually the strikes do not occur simultaneously, but in this case they did.

Q Can you state the extent to which operations in the anthracite and bituminous coal industries were interrupted?

A In the anthracite it was completely tied up. In the bituminous, the important areas, known as the central competitive area, which is in the Central West, was pretty largely crippled. The strike was quite effective in West Virginia, and then in some of the outlying areas it was not so effective.

Q How long did these strikes last?

A I think the coal strike lasted about two months, if I am not mistaken; I believe it lasted just about that time, and tied up most of the production.

Q Before we get to the steel strike, were there also strikes on the railroads during this period?

A Yes; there were two strikes in the railroad industry, one in 1919, primarily of railway trainmen, which quite seriously affected the movement of trains in important areas like Chicago; that is, it affected the movement out of Chicago and out of New York and the New Jersey yards, and so on.

That strike lasted a few weeks during which train schedules, of course, were disrupted, and the movement of freight was very seriously affected, although there was some movement. There was also an increase in accidents, and so on.

Then there was the railway shopmen's strike of 1922. That strike involved most of the workers employed in the railway shops of the important railway systems of the United States, and of course that seriously affected the movement of commerce, as those who have traveled during that period very well know. I did considerably traveling during that time and never arrived at my destination on time, usually being three, four, and five hours late, because the railway equipment was not properly taken care of and therefore there were breakdowns in the open country, and often it was necessary to wait until a crew was brought from the nearest railway center to make the repairs. That was a very common occurrance during this railway shopmen's strike of 1922.

Q Would you say it is a fair summary to say that aside from minor strikes, relatively minor strikes, occurring during this period, there were major strikes in the four years from 1919 to 1922 which, in the basic industries, such as meat, packing, shipping, garment, textile, and electric manufacturing, coal mining, railroads, and steel, which caused major interruptions of commerce in those industries?

A Yes. It might be necessary to make an explanation with reference to coal, as far as causes are concerned, but all these strikes did interrupt commerce very seriously and effectively.

Q Now, specifically with reference to the steel strike of 1919, would you state the effect that that strike had upon production in the industry and commerce in the production of the industry?

A The steel strike of 1919 was again a general strike of the entire industry. It involved at its peak over 350,000 workers directly and, all in all, according to the estimate of the United States Senate Investigating Committee of the steel strike industry, about 500,000 workers.

I was in the field at that time, visiting the important steel centers, and found, for instance, that around the Chicago area—what is known as the Calumet District—the industry was practically at a stand-still.

In the Youngstown area the same situation prevailed.

Q How long did this continue?

A The strike lasted thirteen weeks. It was effective about eight or nine weeks, and then began to peter out so that production continued again.

In the Pittsburgh area there was some production, because the skilled workers did not join in the strike in the Pittsburgh area; whereas they did in these other areas; so that steel production was pretty largely stopped, and of course there were no shipments and no movement on that basis.

MR. CARMODY: In what you call the Calumet District around Chicago, does that take in South Chicago and Hammond?

THE WITNESS: Yes, and Gary.

MR. CARMODY: And Gary?

THE WITNESS: Yes.

MR. CARMODY: That is the largest steel producing area west of Pittsburgh, is it not—that particular area?

THE WITNESS: Yes; it is now regarded as even larger than the Pittsburgh district . I doubt whether it was at that time, but it was certainly next to Pittsburgh the largest steel producing center in the United States.

The chief demand, of course, of the strikers, again, was the right to organize for collective bargaining; that is, they wanted conferences with the owners of the steel mills, who refused to grant them.

There was a great deal of violence in the strike period. It was found that the companies used undercover men, labor spies, and so on, during this particular strike.

Now, as to its effect upon the movement of commerce, I have here quotations from the chief trade paper, known as the "Iron Age"—a paper that is intimately associated with the industry, that has the confidence of the employers in the industry, and it might be considered as a semi-official organ of the industry, and therefore, of course, thoroughly conversant with the general labor and economic situation in the industry.

This paper reported during the strike items indicating the general situation in so far as industry was affected by the strike, from various areas.

MR. CARMODY: How frequently is it published?

THE WITNESS: It is a weekly, I think, now.

MR. CARMODY: And has been always, has it not?

THE WITNESS: I have here a number of quotations from various markets reporting the situation during the strike. Here is one dated September 22nd.

BY MR. EMERSON:

Q Just a minute. These quotations were prepared

under your supervision and taken from these publications under your supervision?

A Yes.

Q And to the best of your knowledge they are correct?

A Yes. The news items as they appear in this paper are usually headed by the name of the city from which they come, where the correspondents of this paper sent them in. This one is Philadelphia, September 22nd.

MR. CARMODY: What year?

THE WITNESS: It is 1919, the year of the strike?

BY MR. EMERSON:

Q From what issue of the paper?

A From Volume 104, No. 13, of "Iron Age"—

> "Though the steel strike, when launched, proved to be far from the extensive thing the labor leaders predicted it would be, its general effect was to paralyze the iron and steel market. Not knowing just what they had to face, some mills directed their representatives to cease taking orders, and under no circumstances to promise definite deliveries against contracts or specifications. Pig iron, quiet before the strike, only became more so.' '

Then there is this one from Cleveland, September 22, 1919:

Q Is this from the same publication?

A From the same publication, entitled "Iron Ore"—

> "The tying up of lake boats engaged in the transportation of iron ore is threatened. Lake seamen have voted in favor of a sympathetic strike and a strike vote is now being taken by both cooks and firemen."

Under the heading "Pig Iron" is this one:

> "The market has been very dull the past week. A few sales of foundry iron are reported

in lots up to 200 tons to fill our requirements for the remainder of the year. But many consumers are waiting developments in the steel strike situation before placing orders. During the past few days furnaces have receiver numerous requests to hurry shipments."

That meant to hurry shipments before or in anticipation of the strike.

Under "Old Material"—and this is also still under the Cleveland heading—

"The steel strike has brought the scrap markets virtually to a standstill. Dealers are making no efforts to effect sales, knowing that were mills willing to buy they would not accept shipments. Practically all mills in this territory have notified dealers to suspend shipments at once.' '

That is still the same date, September 22nd.

Now, under a New York heading, "Pig Iron"—

"Business has taken a decided slump, consumers apparently awaiting the outcome of the steel strike.' '

Another heading, "Finished Iron and Steel"—

"Few offers from consumers are being given serious consideration by selling agencies. What business has been taken is largely by mills which do not seem to be seriously threatened with strike curtailment of operations."

The following is from the same paper, "Iron Age," Volume 104, Uo. 14, dated October 2, 1919. The headline is "Pittsburgh, September 26:"

"Everything in the steel trade is subordinate to the strike, and neither producers nor consumers are making any real effort to do business.

"Ferroalloys—Nothing is being done in ferroalloys, due to the steel strike, neither buyers nor producers attempting to do business under present conditions.

"Structural Material—The steel strike has disturbed the structural steel trade to a considerable extent, and some jobs pending are hung up until the strike is over.

"Wire Products—Production in this district has been cut down by the strike. The demand is fair and the mills are being importuned for shipments by jobbers and consumers who are getting uneasy about their supply on account of the strike.

"Old Material—The local scrap market is stagnant. The shut-down of some of the steel plants, partly or in full, has resulted in shipments being held up, and some scrap is appearing that has to be move."

For Chicago, the same date September 26:

"The strike has had the effect of bringing business to a standstill. Inquiries continue heavy but the mills are unable to take orders except subject to the delay incident to the present labor situation.'"

Under a new heading, "Bars"—

"The demand for mild steel and rail carbon bars is exceedingly heavy with the supply limited largely to jobbers. The strike will have the effect of making early deliveries out of the question even when the plants now closed open. The leading independent, for instance, could not promise delivery before 1920 even if it resumed operations immediately."

This is still September 26, 1919.

MR. CARMODY: By "leading independent," that means the largest steel company after the United States Steel Corporation?

THE WITNESS: Yes, after the United States Steel Corporation is what is meant by the "leading independent, which is undoubtedly the Bethlehem.

MR. CARMODY: And, as of September 26, they could not promise delivery until the next year?

THE WITNESS: Yes.

MR. CARMODY: More than three months later?

THE WITNESS: Yes.

MR. CARMODY: Even if the strike were settled promptly?

THE WITNESS: Right then and there, if the strike were settled, and they reopened immediately.

Under that date, September 26, the next is "Pig Iron"—

> "The demand for spot iron and coke continues heavy. Furnaces in other districts which have not been affected by the strike are beginning to close business with Northern smelters who fear that they may not secure deliveries on their orders for 2000 tons of foundry iron since the first of the week."

There is another item from that issue from Cleveland, headed "Iron Ore" —

> "The effect of the steel strike has already reached the Lake Superior ore mines. Operations at one of the large open pit properties has been suspended and further curtailment is expected * * * * * A sharp halt has been made in the ore movement. Most steel plants have shut off shipments so that the greater part of the ore is now going on docks * * * * Boats are being delayed several days in unloading ore cargoes and many are being tied up after discharging their cargoes."

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BY MR. EMERSON:

Q Now, Mr. Saposs, referring to the period from 1933 to 1935, would you state first the number of strikes which occurred during that time?

A This is the 1933 to 1935 period; it is another one of these periods of very intense activity, and we find the number of strikes increasing considerably as reported,

compared with the six years previous thereto, that is, from 1927 to 1932.

Whereas in no year during this period from 1927 to 1932 did the strikes reach the number of 1,000, we find that during the years 1933 to 1935 they exceeded that number as follows:

In 1933 there were recorder 1,562 strikes; in 1934, 1,856 strikes were recorded; in 1935, 1,898 strikes were recorded.

Q Can you state the number of employees involved in labor disputes during that period?

A The number of employees involved during this period, with incomplete figures for the year 1935, as follows:

In 1933, 812,137 employees were directly involved as reported in disputes.

In 1934, 1,353,608 employees were involved in labor disputes.

In 1935, there were 1,141,363 employees involved.

So that during this period of three years there were over three million employees directly involved in strikes, as the records of the United States Bureau of Labor Statistics indicate.

Q Will you state for the same period the effect of these strikes as measured by the number of man-days of idleness resulting?

A For 1933 there were 14,818,846 man-days of idleness recorder for strikes.

For 1934, 19,306,650 man-days of idleness.

For 1935 incomplete figures show 15,014,029 man-days lost.

Q Will you state the source of those figures?

A These come from the Monthly Labor Review for July, 1934, May, 1935, and also for March, 1936.

Q And are they based upon compilations of the Bureau of Labor Statistics?

A Yes; they are based on the compilations of the United States Bureau of Labor Statistics.

Q Now, would you state for the period 1933 to 1935 the major strikes which occurred during that time, and the effect of those strikes upon interstate and foreign commerce?

A Some of the more important strikes, from 1933 to 1935 are recorded, and we have brought together memoranda describing those strikes. They are the New York Shipbuilding strike, at Camden, New Jersey; then there were several automobile strikes—

Q (interposing) Taking the first New York Shipbuilding strike, how many employees were involved in that strike?

A There were involved 3,888 workers directly in in the strike.

Q How long did the strike last?

A It lasted from May 11, 1935, to August 27 of the same year.

Q Can you state the causes of that strike?

A The cause of this strike was the refusal of the New York Shipbuilding Company to recognize the union, to recognize the union which is known as the Industrial Union of Marine & Shipbuilding Workers, as the exclusive spokesman for the workers and the exclusive bargaining agency for the workers employed by the company.

Q Was a study made under your supervision of the effect of that strike upon commerce, in materials flowing into the plant of the New York Shipbuilding Company?

A Yes.

Q Would you state briefly the general results of that survey?

A This is a strike in which we succeeded in getting quantitative material illustrating how the movement of freight in and out of New York Shipbuilding Company yards was affected, before the strike, during the strike, and following the strike.

Q Excuse me. Would you state first how the study which you conducted was made?

A The material was gathered by one of our representatives connected with the Philadelphia office, who lifted the information from the records of the railroad companies that carry freight to the New York Shipbuilding Company.

MR. CARMODY: What do you mean by "lifted"?

THE WITNESS: He took the information from the bills of lading as deposited in the freight office.

BY MR. EMERSON:

Q Was this done with the cooperation of the railroad companies?

A The railroad companies permitted him to consult those records. And then, on the basis of the detailed information, item by item, which he sent us here, we classified the material into carload shipments and less-than-carload shipments, as represented by the tables which I have here. And, of course, it shows clearly a falling-off of shipments during the strike.

Q I show you these tables and ask you if this is a table prepared under your supervision, showing the New York Shipbuilding Company's delivery record of the Pennsylvania-Reading Seashore Lines, the carloads before, during, and after the strike of May 11 to August 27, 1935.

A Yes.

Q Also a table showing the number of carloads delivered to the New York Shipbuilding Company by the Pennsylvania-Reading Seashore Lines, by States and by months, April to November, 1935?

A Yes.

Q Also a third table showing the number of pounds of freight delivered to the New York Shipbuilding Company by the Pennsylvania-Reading Seashore Lines, by States and months, April to November, 1935?

A Yes.

Mr. Emerson: I offer these tables in evidence.

CHAIRMAN MADDEN: They may be admitted.

BY MR. EMERSON:

Q These tables were prepared in the manner which you have just described?

A Yes.

(The paper referred to was received in evidence and marked as Board's Exhibit No. 53, Wheeling Steel Corporation; and Board's Exhibit No. 96, Jones & Laughlin Steel Corporation and Board's Exhibit No. 41, Crucible Steel Company of America.)

BY MR. EMERSON:

Q Mr. Saposs, would you state what this first table, which has just been introduced in evidence, shows?

A The first tables indicate that the railroad in question delivered 142 carloads of freight to the New York Shipbuilding Company during the last 40 days previous to the calling of the strike; that is, through April 1 to May 10.

That during the 109 days of the strike, that is, from May 11 through August 27, only 47 carloads were delivered.

That during the 95 days following the strike, that is, from August 28 to November 30, these same railroad lines delivered 341 carloads of freight.

MR. CARMODY: Have you the correct number of days of the duration of the strike there?

THE WITNESS: Yes.

MR. CARMODY: What is that number?

THE WITNESS: Let us see. From May 11 to August 27.

MR. CARMODY: How many days is that? Did you read that?

THE WITNESS: Yes; 109 days, I think it was.

MR. CARMODY: 109?

THE WITNESS: Yes.

Q Will you state what the second table shows?

A The second table enumerates in detail the States of origin, the number of carloads that came in interstate commerce to the New York Shipbuilding Company over the three railroad lines.

It will be seen that from April 1 through November 30, the New York Shipbuilding Company received carload freight over the three lines specified from 15 different States and the District of Columbia, distributed regionally as follows:

From New England—Maine, Massachusetts, Rhode Island, Connecticut—making four States.

From the middle Atlantic States—New York and Pennsylvania—making two States.

From the east north central—Wisconsin, Illinois, Indiana, Michigan, and Ohio—making five states.

From the South Atlantic—Maryland, District of Columbia, West Virginia—making three.

From the east south central—Tennessee—one State.

From the west south central—Oklahoma—one State.

The second table also reveals the tremendous variety of articles shipped in interstate commerce, including such items as coal, gas, oil, machinery, lumber, steel bars, beams, and plates, pipes, wire, chain, electric meters, railroad ties, sleeping berths, airplane landing catapult and so forth, and so forth.

Q Will you state what the third table indicates?

A The third table reveals the decrease in freight received by the railroads in question from the New York Shipbuilding Company during the strike period, given by States and by months.

It will be observed that during the months of May, June, July, and August, there was also a material decrease in less-than-carload shipments.

Q During the period 1933 to 1935 were there also strikes in the automobile industry?

A Yes; there were a number of strikes in the automobile industry. One of these which attracted a

great deal of attention was the Chevrolet strike in Toledo in 1935.

Q Would you state the number of employees involved in that strike, and the causes of that strike?

A The strike was called on April 23d by the United Automobile Workers Federal Union No. 18384.

Here is a quotation from the Monthly Labor Review of July, 1935, which gives the information with reference to the number of workers involved. It says:

> "The strike called at Toledo closed down the General Motors' plant which manufactures the transmissions for Chevrolet cars. On April 30 the Cincinnati Automobile Workers' Federal Union called a strike against the Fisher Body and Chevrolet plants in that city. At Cleveland and Atlanta sympathetic strikes were called, but only after the General Motors Corporation had closed these plants because of lack of transmissions. In these cities about 15,000 General Motors' employees were thrown out of work. In addition, about an equal number of employees in other plants were laid off due to lack of materials furnished by these plants."

MR. CARMODY: May I ask at that point, do I understand you to mean that because of a strike in a General Motors plant in Toledo, Ohio, where transmissions were made, that other plants of the General Motors were required to shut down because they could not get these transmissions to assemble with other parts to make a complete automobile?

THE WITNESS: Yes.

MR. CARMODY: That one of the other plants was in Cincinnati and the other was in Atlanta, Georgia, and another one in Tarrytown?

THE WITNESS: Atlanta, Georgia and another one in Tarrytown.

And, according to some of the other quotations

which we have from the trade paper of the industry, "Automotive Industries", there were plants tied up in other States as well.

MR. CARMODY: Did it ever occur to you that if that is the way manufacturing is carried on today, with one part of the car or product made in one State and another part in another State, and another part in yet another State, all of which have to be assembled somewhere to make the completed car or product, that that is the equivalent, really, of having a factory of separate divisions that might be on one lot, but is not on one lot because of peculiar economic conditions?

THE WITNESS: Yes; it certainly shows the delicate interdependence of manufacturing plants in a particular industry.

MR. CARMODY: Is it true, really, that it is one plant, although part of it may be in one State, in Ohio, and another part of it may be in Alabama, and another part may be in Georgia, and another part may be in Mississippi?

THE WITNESS: Yes.

MR. CARMODY: It is just one plant, just one factory in one plant?

THE WITNESS: Yes, for the purpose of turning out one automobile.

MR. CARMODY: For the purpose of turning out any automobile, or a specific automobile, if you please.

THE WITNESS: Yes, it is like one factory.

BY MR. EMERSON:

Q Was a study made under your supervision of the effect on commerce in automobile production and on the production in other industries of this strike of the General Motors Company?

A Yes.

Q Were extracts compiled under your supervision from the trade journal entitled "Automotive Industries", which related to these effects?

A Yes.

Q Would you state what "Automotive Industries" is?

A "Automotive Industries" is the trade paper of the automobile industry which unofficially speaks and voices the views of the industry. It makes it its business to be intimately connected with the industry so as to be thoroughly conversant with developments in that industry.

MR. CARMODY: Is it not true that that journal, "Automotive Industries", for its industry, like "Iron Age" is for its industry, the steel industry, has members of its editorial staff resident in the principal producing centers, and these men, in turn, report conditions to their journal out of their own personal, intimate knowledge?

THE WITNESS: Yes; it has a train staff of people located in the important centers of the automobile industry, whose concern it is to keep themselves thoroughly informed of daily developments in the industry and to report those to the paper.

BY MR. EMERSON:

Q I show you this memorandum and ask you if the extracts contained therein from "Automotive Industries" were compiled under your supervision in the course of this study which you made, and whether, to the best of your knowledge, they are substantially correct.

A Yes; they were compiled under my supervision and I have checked them to make sure of their accuracy.

MR. EMERSON: In order to save time, I think it would be better to have the stenographer just copy these into the record, instead of having Mr. Saposs read them. They are not quite in form to be introduced as exhibits.

CHAIRMAN MADDEN: Very well; they will go in under your statement.

THE WITNESS: The location and size of the plants

involved are described in the trade journal "Automotive Industries", May 4, 1935, page 589:

"Detroit, May 2: The strike at the Chevrolet plant in Toledo, now in its second week with no definite indication of when or how it will be settled, to date has resulted in the closing of Chevrolet and Fisher plants in five other cities with the prospect that the St. Louis plant employing 3,200 will close this evening.

"Meanwhile the crippling effects of the strike are fanning out over a wide area as suppliers receive stop orders on Chevrolet parts and material . . .

"Assembly plants in Tarrytown, N. Y., Kansas City, Janesville and Atlanta were closed by the management for lack of transmissions, laying off a total of 7,200 workers. Earlier in the week the Cleveland Fisher plant which makes Chevrolet stampings, including turret tops, was closed by the company . . . Between 8,500 and 9,000 workers were laid off in Cleveland. The Norwood, Ohio, plant, employing over 2,000, was closed by strikers whose demands paralleled those at Toledo . . .

"Reports coming in indicate that departments in suppliers' plants working on Chevrolet business have been forced to close or curtail operations. Among these are Kelsey-Hayes Wheel Co., which closed down its Chevrolet wheel line; the Murray-Ohio Co., the Fort Smith (Ark.) Body Co., Eaton-Detroit Metal Co., Trumbull Steel, Corrigan-McKinney, and Otis Steel. Toledo parts plants supplying Chevrolet also are curtailing.

"Union leaders are said unofficially to be boasting that by the end of the week all General Motors units will be affected by strikes due to the tying up of key plants . . . (Page 596)

"A conciliatory attitude has been taken by

William S. Knudsen, executive vice president of the General Motors Corp., according to a statement which he issued commenting upon the closing of the Fisher Body plant in Cleveland as forced by the Toledo strike."

In Indiana the effect of the strike was of a different nature (from "Automotive Industries", May 11, 1935, page 624):

"General Motors Corp. started operations Tuesday in its Muncie Products plant (Muncie, Ind.), hurriedly equipped at an estimated cost of $600,000 for the manufacture of transimissions after the Toledo strike cut off the supply of these parts for the Chevrolet and Pontiac divisions."

BY MR. EMERSON:

Q Were there other strikes in the automobile industry during this period, in addition to this General Motors strike you have described?

A Yes; there were a number of strikes in the industry which had a similar effect, although we don't have the specific information on those.

Q You mean you don't have the specific information to the effect?

A Of the effect of those strikes in interstate commerce; yes.

Q Did you also compile from "Automotive Industries" extracts showing the effect of strikes in the automobile industry upon other industries?

A Yes; I had those compiled.

Q Are these those extracts?

A Yes, these are the ones that were gotten out.

MR. EMERSON: I will offer these extracts in evidence as an exhibit, and request permission to have copies made and substituted for the record.

CHAIRMAN MADDEN: It will be received.

(The paper referred to was received in evidence and marked as Board's Exhibit No. 54, Wheeling Steel Corpora-

tion; Board's Exhibit No. 97, Jones & Laughlin Steel Corporation; and Board's Exhibit No. 42, Crucible Steel Company of America.)

BY MR. EMERSON:

Q Now, Mr. Saposs, was a study likewise made under your supervision of the textile strike of 1934?

A It was.

Q Would you state, first, the number of employees involved in that strike?

A The general textile strike, which occured in September, 1934, was the largest strike in the United States since the steel strike of 1919. In the aggregate, 309,500 workers were involved, as reported by the United States Bureau of Labor Statistics.

The strike was called on September 3, 1934, with 175,000 workers responding, and then gradually more appearing, coming out, until the number reached the total I have given.

The United States Bureau of Labor Statistics also reports that about 60,000 workers in other industries went out in sympathy with the textile workers, including clothing workers, miners, and hosiery workers.

The description of the strike is well summarized in the report of the United States Board of Inquiry for the Cotton Textile Industry, appointed by the President and popularly known as the Winant Reports, as follows:

> "The present strike centers primarily around troubles in the cotton-textile industry. Nevertheless, workers in the wool-textile, silk-textile, throwing, velvet, upholstery, and drapery industries in the wool trade and in certain parts of the hosiery industry have been called out."

The prime issue in this strike was the right to collective bargaining, as was stated by the union.

Q Have extracts been prepared under your supervision from the "American Wool & Cotton Reporter",

showing the effect of this strike upon interstate movement of goods in the textile industry?

A Yes, they were.

Q I show you this paper and ask you whether these are the extracts and whether they are substantially correct, to the best of your knowledge?

A Yes, they are.

MR. EMERSON: I will offer this in evidence.

CHAIRMAN MADDEN: It may be received.

(The paper referred to was received in evidence and marked as Board's Exhibit No. 55, Wheeling Steel Corporation; Board's Exhibit No. 98 Jones & Laughlin Steel Corporation; and Board's Exhibit No. 43, Crucible Steel Company of America.)

MR. SMITH: Has the American Wool & Cotton Reporter the same standing in the textile industry as these other publications have in their respective industries?

THE WITNESS: Yes, it has.

MR. CARMODY: You spoke of the so-called Winant Reports. What did you mean by that?

THE WITNESS: Ex-Governor Winant of New Hampshire was appointed to head up the report by the President of the United States.

MR. CARMODY: He was chairman?

THE WITNESS: Yes, he was chairman of the committee that made the study. That committee prepared the reports from which I quoted. He is now chairman of the Social Securities Board.

BY MR. EMERSON:

Q Dr. Sapos, was a study likewise made under your supervision of the Pacific coast lumber strike?

A Yes, it was.

Q Would you state briefly the number of em-

ployees involved in that strike and the duration of the strike?

A The Pacific coast lumber strike of 1935 was called by the Sawmill & Timber Workers' Union, affiliated with the American Federation of Labor through the United Brotherhood of Carpenters & Joiners.

The description of the strike is well stated in a quotation from the Monthly Labor Review of the United States Bureau of Labor Statistics for September, 1935, pages 656 to 659, and I am reading from that now:

> "On the sixth of May the strike became general. By the first of June it had reached its peak, with practically all the camps and mills tied up, involving 32,000 lumber workers.
>
> "Shipping and other affiliated industries were seriously affected. In order to save perishable goods, the union and berry growers made arrangements to reopen plants making fruit boxes and crates.' "

The Secretary of Labor had to appoint a Federal Lumber Mediation Board to intervene in the settlement of the strike.

The main issue, again, was union recognition.

Q Were extracts compiled from the American Lumberman and from the files of the conciliation service of the Department of Labor, showing the effect of this strike upon interstate commerce?

A Yes, there were.

Q I show you this memorandum and ask you if the extracts contained therein are those to which you refer.

A Yes, they are.

MR. CARMODY: When you speak of the "American Lumberman", is that the trade journal in the lumber industry, having the same standing and similar to these other journals you have mentioned for the other industries, like the "Automotive Industries" for the automobile industry and the "Iron Age" for the iron and steel industry?

THE WITNESS: Yes; it is the standard trade journal for the industry.

BY MR. EMERSON:

Q Will you state whether those extracts are accurate, to the best of your knowledge?

A Yes; they are.

MR. EMERSON: I will offer these in evidence.

CHAIRMAN MADDEN: They will be received.

(The paper referred to was received in evidence and marked as Board's Exhibit No. 56, Wheeling Steel Corporation; Board's Exhibit No. 99, Jones & Laughlin Steel Corporation; and Board's Exhibit No. 44, Crucible Steel Company of America.)

BY MR. EMERSON:

Q Did you also make a study of the Pacific coast water-transport strike and the San Francisco general strike?

A Yes, we made a study of that strike also.

Q Could you state the number of employees involved and the duration and the causes of that strike?

A The strike occurred over a labor dispute between the longshoremen in San Francisco and the waterfront employers' union, representing the employers.

The strike finally broke out on May 9, after long negotiation involving 6,000 longshoremen, but, by this time, it had extended to the entire Pacific coast, including Tacoma, Everett, Seattle, Olympia, Aberdeen, Vancouver, Astoria, St. Helena Raynor Portland, Marshfield, Billingham, Los Angeles, San Francisco, San Diego, and Longview—the important points along the Pacific coast.

One of the prime issues in that strike was control of hiring-halls which is equivalent to what is ordinarily meant union recognition, because the hiring-halls were controlled by the employers, and nobody, of course,

could get employment unless they were approved by these hiring-halls, and the union demanded a voice in the control of these halls, so as to protect its members in securing employment and against discrimination by the employers who were refusing to recognize the right of the union to speak for the longshoremen.

MR. CARMODY: Is it not true that the full significance of that will be better understood if you relate that these men, or the great majority of them, are hired every day, or for every cargo?

THE WITNESS: Yes.

MR. CARMODY: As I understand it, there is no such thing as permanent employment for these waterfront men, but they are hired as ships come in to load or unload their cargo? Is that not true?

THE WITNESS: Yes, it is.

MR. CARMODY: So that, as far as their employment is concerned, it may be affected almost every working day by the question of whether an employer wants to hire union men or will not hire a union man?

THE WITNESS: Yes, that is so.

BY MR. EMERSON:

Q Now, will you state briefly the chief events of that strike?

A While the strike first involved only the longshoremen, it spread to other maritime workers, and, on May 17th, 8,000 seamen, including sailors, firemen, oilers, cooks, stewards, and so forth, struck in sympathy with the longshoremen, demanding, however, in addition, union recognition, wage increases, shorter hours, and better conditions.

The President of the United States intervened and appointed a special board to mediate the strike. In the meantime, however, a general strike was called in San Francisco, tying up the complete commercial and civic life of the community, and putting everything under the control and into the hands of the organized committee to handle the affairs of the city.

Q How long did the longshoremen's strike last?

A It finally ended on October 12, 1934.

Q Did you state when it began?

A Yes, I gave it.

Q How long did the general strike in San Francisco last?

A The general strike in San Francisco lasted about a week, I believe. No; it was called on July 16th and called off on the 19th. It was a protest strike, in sympathy with the longshoremen, who were denied the right to organize by the employers.

Q Now, in addition to these strikes which you have mentioned, were there other strikes of major importance during the period we are discussing here, 1933 to 1935?

A Yes, there were a number of other strikes, but we did not make any effort to study them in the same way that we did these.

Q That is, you did not study the effect upon commerce?

A No.

Q Can you just list what those strikes were, and the industries involved?

A There was the rubber strike; there was a strike in the garment industry. I think those are about all.

Q Were there also steel strikes?

A No, there were no steel strikes?

MR. CARMODY: You are now talking about large strikes?

THE WITNESS: Yes.

MR. CARMODY: Not sporadic strikes in various parts of the country?

THE WITNESS. No.

MR. CARMODY: But large strikes?

THE WITNESS: Yes. There was a strike of teamsters in Minneapolis.

BY MR. EMERSON:

Q Were there strikes in certain large plants of the steel industry, such as the Wierton plant?

A Yes; there was a strike in the Wierton plant, which involved all the workers there.

Q Would you state whether or not there were any threatened strikes which were of major importance and which were prevented by Federal intervention of one sort or another?

A There was a threatened general strike in the steel industry in 1934, which was only averted by the President's personal intervention and meeting with the representatives of the employers and the representatives of the workers through their union officials.

Q What were the issues in that threatened strike?

A The issue, again, was the right to organize, although there were issues of wages and so forth, too.

The President finally appointed the Steel Labor Relations Board, which prevented that general strike.

Q Was there also a threatened general strike in the automobile industry?

A There was a similar situation in the automobile industry, where the workers who had organized themselves into unions threatened a general strike because the employers refused to recognize them as the spokesmen for the automobile workers.

The President called the representatives of the unions to Washington, as well as the representatives of the industry; and, after a number of conferences, the threat of a general strike in the automobile industry was averted—the President succeeding in averting that by the establishment of the Automobile Labor Board.

Q Was there also industrial unrest and a threatened strike in the rubber industry?

A There was a similar situation in the rubber industry, which was averted by the intervention of the Secretary of Labor at the request of the President, and there, again, the representatives of the workers, through their union officials, came to Washington, together with the representatives of the industry, and the Secretary

succeeded in securing their approval of a settlement which prevented the strike.

MR. CARMODY: What branch of the rubber industry was that?

THE WITNESS: Rubber tires.

MR. CARMODY: Where was this strike threat centered?

THE WITNESS: It was centered primarily in Akron, although there were union representatives from other sections also.

MR. CARMODY: What percentage of the total tire production of this country is produced at Akron?

THE WITNESS: I believe 60 percent of the production.

MR. CARMODY: Of all automobile tires in the United States?

THE WITNESS: All automobile tires in the United States.

BY MR. EMERSON:

Q What was the situation, as far as the labor situation is concerned, in the aluminum industry, during this period.

A There was a similar situation in the aluminum industry, where the workers had organized themselves into unions and demanded union recognition of the Aluminum Company of America, which is the largest producer.

In that case intervention occurred through the Federal conciliation division, and a settlement was arrived at which settled the matter.

A strike actually occurred in that industry but through the intervention of the conciliation division a settlement was arrived at which terminated the strike.

Q Was there also a strike in the enameling industry which led to a strike in Terre Haute, Indiana?

A Yes; there was a strike in the plant of the Bingham Stamping Company, centering again over the idea of union recognition and, because of the refusal of the

company to grant this request, there was an unofficial general strike called by the workers. That is, when I say "unofficial", it was not called officially by the central labor union, but by a committee.

However, the union responded to the call and the general strike actually took place.

Q Would you state whether or not it is a fact that in various basic industries in this country there have been periodically and recurrently efforts on the part of the employees to organize in trade unions, and resistance on the part of the employers to such organizations, and consequent periodic and recurrent labor disputes?

A Yes, there have been; and the periods that I have enumerated are typical of what has happened.

Q Yes; I was speaking with respect to industries, the history of particular industries.

A Yes.

Q Would you state in what industries that is so, if it was?

A In the steel industry, for instance, there was, of course, the general strike of 1919, which I have described ,and then there was this threatened general strike of 1934, which would have tied up the industry considerably if there had not been the settlement.

At the present time there is a great deal of labor unrest in the country, centering around the same issue of union recognition, which is manifest in various forms.

At the Atlantic City conventaion of 1935, the American Federation of Labor instructed its governing body, the executive council, to bring together the unions that would be interested in organizing the steel industry.

There is also unrest on the part of the company unions—on the part of some of the company unions—and there is unrest among the organized workers, as is evidenced by the cases before this Board, and there is a group of militant unions banded together in the Com-

mittee on Industrial Organization that is interesting itself in organizing the steel industry.

Q Would you say that my statement would be true with respect to the automobile industry?

A Yes; the same situation exists in the automobile industry at the present time.

Q The rubber industry?

A A similar situation exists in the rubber industry, having, of course, resulted in a strike which just ended.

Q And would you say the same would be true of the textile, the coal, and shipping industries?

A In the textile industry that situation is true.

In the shipping industry that situation is true.

In the coal industry the bulk of the employers have granted union recognition, and, therefore, at the present time there is no threat of interruption of production.

Q Was that true in the coal industry up until recent times?

A No. There were serious threats of a general strike in the coal industry up to the enactment of the so-called Guffy Act.

Q And that was in 1935?

A That was in 1935.

MR. CARMODY: May I ask just one question there?

You talked about these industries where there are recurring strikes, for the purpose of achieving union recognition. Would you take the railroad industry as an industry in which, generally speaking, that problem has been solved through the acceptance by part of the carriers of the right of their employees to bargain under Federal laws that require them to do it?

THE WITNESS: Yes; in the railroad industry, where, while there are serious differences of opinion between the organized workers and management, there is no talk or threat of any strikes.

MR. CARMODY: Now, if the railroads were free

from the pressure of the Federal Government to accept mediation and union negotiations with standard unions in an orderly fashion, is there any reason in your mind for believing that they would act differently than these other employers who are constantly striving to break up the unions?

THE WITNESS: Not at all. As past history shows, they will undoubtedly act in the same manner as the employers in the other industries that we have discussed.

MR. CARMODY: Is it not true that when labor legislation is before the Congress for discussion or for actual passage, that the carriers even today oppose that labor legislation as much as other manufacturers oppose this law and similar laws that have passed or have been introduced into the Congress?

THE WITNESS: That is true, and they have challenged it, of course, in the courts.

MR. CARMODY: But, in spite of that, they do go on negotiating, and they do not have these recurring strikes?

THE WITNESS: Yes; they have worked according to the law and they have conducted negotiations, often of long duration.

MR. CARMODY: And they have adjusted their managerial policies and their managerial personnel to that kind of labor relationship?

THE WITNESS: Yes; they have now adjusted and they have apparently accepted the machinery, because they operate under it.

MR. CARMODY: So that, while we have had here from you many evidences of recurring strikes in seveal important industries in the United States, that very seriously affect commerce, you now say that this questions seem to be settled on the railroads, because a similar law to this has been enacted and has been put into use? Is that true?

THE WITNESS: Yes, that is true.

MR. CARMODY: And these wasteful, costly strikes do not occur? Is that true?

THE WITNESS: No.

BY MR. EMERSON:

Q Is there a tendency in situations in these basic industries about which we have been talking for the strikes to be industry-wide in nature?

A Yes! these is a growing tendency for the strikes in the more important industries to be industry-wide in nature.

Q Now, I will ask you whether or not business practice commonly takes into account possible interference of strikes with the movement of commerce?

A Yes; business practive has, for a long time, taken into consideration the fact that strikes do interfere with the movement of commerce and therefore they make it a point, pretty largely, to include in their compliance clauses the fact that if strikes occur they are not bound to fulfill the contract.

Q I will ask you whether or not you have prepared a memorandum on the subject of strike clauses in contracts, whether such a memorandum has been prepared under your supervision.

A It has.

Q State whether or not the facts presented in that memorandum are, to the best of your knowledge, accurate.

A They are.

MR. EMERSON: For the purpose of saving time, I should like to introduce this memorandum on strike causes in evidence.

CHAIRMAN MADDEN: It may be admitted.

(The paper referred to was received in evidence and marked as Board's Exhibit No. 57, Wheeling Steel Corporation; Board's Exhibit No. 100, Jones & Laughlin Steel Corporation; and Board's Exhibit No. 45, Crucible Steel Company of America.)

BY MR. EMERSON:

Q Will you state, Mr. Saposs, whether or not it is the concesus of opinion among economists that under present conditions there exists inequality of bargaining power between individual employees and the ordinary employer?

A Yes, there is.

Q Would you say that that is the opinion of most experts in this field?

A It is undoubtedly the opinion of the large number of experts in this field?

Q Would you say that it follows from that that there are powerful incentives arising from economic necessity for employees to organize in their dealings with employers?

A That is undoubtedly the underlying motive for workers to organize into unions, so that they can deal on an approximate equality with their employers.

Q And if employers resist this effort to organize through discharge of employees, and other methods of a similar nature, what recourse do employees have in order to achieve organization?

A The only recourse that employees have in a situation of that kind is the strike?

Q Now, I will ask you to summarize the statistics which show the number of strikes which are due to efforts on the part of employees to organize, and resistance by employers to that organization through an attempted denial of the right.

A We have prepared from the publications of the United States Bureau of Labor Statistics two tables which illustrate the growing number of strikes centering around the major issue of union recognition.

One of these tables gives the information from 1881 to 1905; the other one from 1919 to 1934—there being a gap in between because the United States Bureau of Labor Statistics did not gather statistics on this subject during the intervening period.

Q Were these tables prepared under your supervision?

A Yes.

Q And are they substantially correct, according to the best of your knowledge?

A They are.

MR. EMERSON: I will offer these in evidence.

CHAIRMAN MADDEN: They will be admitted.

(The paper referred to was received in evidence and marked as Board's Exhibit No. 58, Wheeling Steel Corporation; Board's Exhibit No. 101, Jones & Laughlin Steel Corporation; and Board's Exhibit No. 46, Crucible Steel Company of America,)

BY MR. EMERSON:

Q I show you this chart and ask you if this was prepared under your supervision and what it purports to show.

A This chart was prepared under my supervision, and it shows the proportion of labor disputes, classified by major issues involved, beginning in each year, 1919 to 1934! and it indicates the persistance of strikes over the issue in which the right to organize is involved, compared with strikes over wages and hours, and miscellaneous strikes.

Q Would you state the source on which this chart is based?

A This is based upon data compiled and issued by the United States Bureau of Labor Statistics.

MR. EMERSON: I will offer this chart in evidence:

CHAIRMAN MADDEN: It will be admitted.

(The chart referred to was received in evidence and marked Board's Exhibit No. 59, Wheeling Steel Corporation;

Board's Exhibit No. 102, Jones & Laughlin Steel Corporation; and Board's Exhibit No. 47, Crucible Steel Company of America.)

BY MR. EMERSON:

Q The statistics on the causes of labor disputes show, do they not, that certain disputes arise over the substantive terms and conditions of employment?

A They do.

Q I will ask you whether or not it is a fact that it is the concensus of opinion among labor economists that strikes arising out of such sources can be adjusted or prevented through conference procedure between representatives selected by both parties?

A Yes; that is the prevailing opinion of students of the subject.

Q I show you two tables, the first one entitled "Number of Labor Disputes in the United States, 1881 to 1905, and from 1915 to 1935".

The second table is entitled "Number of Labor Disputes, Number of Workers Involved, Average Number of Workers per Dispute, and Number of Man-Days of Idleness, 1916 to 1935", and I ask you if these tables were prepared under your supervision and whether they are, to the best of your knowledge, accurate statements of the reports of the Bureau of Labor Statistics on strikes.

A Yes, they were prepared under my supervision, and, to the best of my knowledge, they are accurate statistics on the subject.

MR. EMERSON: I will offer these in evidence:

CHAIRMAN MADDEN: They will be admitted:

(The tables referred to were received in evidence and marked, collectively, as Board's Exhibit No. 60, Wheeling Steel Corporation; Board's Exhibit No. 103, Jones & Laughlin Steel Corpora-

tion; and Board's Exhibit No. 48, Crucible Steel Company of America.)

BY MR. WIRIN:

Q Now, Mr. Saposs, I show you a paper entitled "Percentage of Company Unions Formed and Percentage of Organization Disputes Occurring in 1919 to 1935, by Sub-Periods", and ask you if that was prepared under your supervision.

A Yes, this chart was prepared under my supervision.

Q And it is an accurate statement, as a chart, of the material which is taken from the Monthly Labor Review of June, 1933, July, 1934, May, 1935, and February, 1936, inclusive?

A It is.

MR. WIRIN: We will offer that as Board's Exhibit next in order

CHAIRMAN MADDEN: It will be received.

(The chart referred to was received in evidence and marked as Board's Exhibit No. 61, Wheeling Steel Corporation; Board's Exhibit No. 104, Jones & Laughlin Steel Corporation; and Board's Exhibit No. 49, Crucible Steel Company of America.)

BY MR. WIRIN:

Q Now, Mr. Saposs, have you had prepared under your supervision a legislative history of Senate Resolution of August 7, 1882, authorizing the Senate Committee on Education and Labor to investigate labor disputes?

A I have.

Q And is that a fair report of the legislative history of that resolution of Congress?

A It is.

MR. WIRIN: We will offer that in evidence as the Board's exhibit next in order.

CHAIRMAN MADDEN: It will be admitted.

(The paper referred to was received in evidence and marked Board's Exhibit No. 62, Wheeling Steel Corporation; Board's Exhibit No. 105, Jones & Laughlin Steel Corporation; and Board's Exhibit No. 50, Crucible Steel Company of America.)

BY MR. WIRIN:

Q Mr. Saposs, Have you caused a memorandum to be prepared which discloses the purposes and reasons for investigations of the industrial commissions of 1898 and 1912?

A I have.

Q I will ask you if that is the memorandum which you have prepared?

A It is.

Q Is that a fair statement of the history of the Congressional acts which led to the appointment of those commission and are the quotations correct quotations from the legislative journals referred to?

A Yes, sir; it is a fair statement and the quotations are correct.

MR. WIRIN: Then we will offer this in evidence.

CHAIRMAN MADDEN: It will be received.

(The paper referred to was received in evidence and marked as Board's Exhibit No. 63, Wheeling Steel Corporation; Board's Exhibit No. 106, Jones & Laughlin Steel Corporation and Board's Exhibit No. 51, Crucible Steel Company of America.)

BY MR. WIRIN:

Q Were you present, Mr. Saposs, during the testimony of Professor Berman concerning the experience of Governmental intervention and labor disputes up to 1933?

A I was.

Q Have you caused to be prepared under your supervision a memorandum which deals with the experience of Governmental agencies since 1933 and to and including 1936?

A I have.

Q Which also includes the experience of the former National Labor Relations Board and the present National Labor Relations Board currently?

A Yes; I have.

Q And is that statement a fair statement of the experience of the boards and agencies that are mentioned in this memorandum?

A To my knowledge, it is.

MR. WIRIN: We will offer this in evidence as the Board's next exhibit, but would like permission to substitute another draft, because this contains some pencil notations, and we would rather have in the record a typewritten copy.

CHAIRMAN MADDEN: It will be so admitted.

(The paper referred to was received in evidence and marked as Board's Exhibit No. 64, Wheeling Steel Corporation; Board's Exhibit No. 107, Jones & Laughlin Steel Corporation; and Board's Exhibit No. 52, Crucible Steel Company of America.)

BY MR. WIRIN:

Q Will you, Mr. Saposs, tell the Board what the International Labour Office is?

A The International Labour Office is a world organization located in Geneva and accountable to the

League of Nations, but financed by the various nations that are members of the International Labour Office.

Q Is the Government of the United States a member of the International Labour Office?

A The United States Government is a member of the International Labour Office.

Q Does the American Government have a representative as an active participant in the International Labour Office?

A The American Government has a labor commissioner, Mr. William G. Rice, Jr., who is the resident representative of the Government at Geneva in the International Labour Office.

Q Will you state whether or not recently the International Labour Office has made a study of legislation in various countries, including the United States and other countries—?

A It has.

Q (continuing)—with particular reference, now, to legislation which purports to prohibit certain unfair labor practices by employers?

A Yes, sir; it has made such a preliminary study.

Q I show you a mimeographed paper entitled "International Labour Office, Committee on Freedom of Association, Geneva, 15 February, 1936." This is further entitled: "Preliminary Report on the Resolution Concerning the Workers' Right of Associated, Adopted by the Conference at its 19th Session."

I ask you if that is the study to which you refer.

A This is the study to which I refer, which was made by the International Labour Office.

Q Does that study disclose that other governments and other countries have adopted legislation which undertakes to prohibit certain unfair labor practices by employers?

A It does.

MR. WIRIN: We will offer that as the Board's exhibit next in order.

CHAIRMAN MADDEN: It will be admitted.

(The paper referred to was received in evidence and marked as Board's Exhibit No. 65, Wheeling Steel Corporation; Board's Exhibit No. 108, Jones & Laughlin Steel Corporation; and Board's Exhibit No. 53, Crucible Steel Company of America.)

BY MR. WIRIN:

Q Now, Mr. Saposs, I show you a paper which contains a list of books and ask you whether or not that list was prepared under your supervision, and I ask you whether or not the texts which are referred to in that list are all authoritative texts and treatments of various problems of labor relations.

A Yes; this list is an accurate list, and these texts have been accepted by labor economists as written by well-qualified authors on the subject.

MR. WIRIN: We would like to offer this paper into evidence as a Board's exhibit, and, at the same time, ask the Board to take judicial notice of the volumes that are referred to in that exhibit.

CHAIRMAN MADDEN: It will be received.

(The list referred to was received in evidence and marked as Board's Exhibit No. 66, Wheeling Steel Corporation; Board's Exhibit No. 109, and Board's Exhibit No. 54, Crucible Steel Company of America.
*Jones & Laughlin Steel Corp.)

MR. CARMODY: Does that represent books that advocate wholesomer labor practices in industry?—an examination of the difficulties that arise from failure to have these collective arrangements?

THE WITNESS: Yes, they do; and they also con-

cerned themselves with objective, scholarly analyses of the whole subject matter of labor conditions and labor relations.

MR. CARMODY: In view of the fact that the country is full of lawyers that do not believe that these laws ought to be passed, or that they are constitutionally affected, it might be well to get that list into the libraries of some of our law schools, with the hope that not only economists but lawyers would have some appreciation of the value of a civilized method of dealing with labor relations.

BY MR. WIRIN:

Q Mr. Saposs, Mr. Carmody asked of you whether or not these texts that are referred to on this last exhibit advocate wholesome relations between employers and employees.

Let me ask you whether or not they are partisan books or propaganda books in any form, or what is their reputation among economists?

A No; these men are regarded as keen and capable students of the subject matter, who approach their studies from an objective and scholarly point of view, with the aim in mind of getting at a better understanding of the labor problem.

MR. CARMODY: I have not seen the list; but, for instance, is there a book there—is there any book there written by John R. Commons?

THE WITNESS: Yes, there are several of them.

MR. CARMODY: Do you know from your own knowledge whether or not there are industries in the United States where John R. Commons has assisted in the development of collective bargaining arrangements, or where his students have assisted in the development of those arrangements, that have prevented strikes, and that are currently operative and effective in keeping strikes and labor disputes down?

THE WITNESS: Yes, there are a number of such industries. Just to mention a few—the garment, the printing, the railroad.

MR. CARMODY: So that there has been already a practical application of some of the theories advocated in these books?

THE WITNESS: Oh, yes.

MR. CARMODY: In American industry?

THE WITNESS: Yes.

BY MR. WIRIN:

Q Were you present at the hearing when Mr. Bowers, I believe it was, testified about a research organization of employers, known as the National Industrial Conference Board?

A Yes.

Q State whether or not in your opinion the National Industrial Conference Board would recognize the authors and the texts which are referred to in the last exhibit as authoritative?

A I believe they would.

Q Now I show you a paper which reads, "National Labor Relations Act, Legislative History" and ask you whether or not that document contains a complete and accurate record of the legislative history of the present National Labor Relations Act.

A Yes, it does that.

Q Does it contain accurate references to the House Report and the Senate Report?

A From my knowledge, it does.

MR. WIRIN: We will offer that as our next and last exhibit, and ask the Board to take judicial notice of the legislative history of the National Labor Relations Act and of the Reports and Congressional records referred to in this exhibit.

CHAIRMAN MADDEN: It will be admitted.

(The document so referred to was received in evidence and marked as Board Exhibit No. 67, Wheeling Steel Corporation; Board Exhibit No. 110, Jones & Laughlin Steel Corporation; Board Exhibit No. 55, Crucible Steel Company of America.)

MR. WIRIN: That concludes our case.

MR. SMITH: Mr. Saposs, Mr. Emerson questioned you as to whether it was true in fact that disputes which concern the substantive conditions of employment, primarily, such as wages, could be adjusted rather easily by the conference method, and you replied, "Yes," that that was so.

Is that correct?

THE WITNESS: It has been found that disputes over substantive conditions can be arbitrated and can be more easily settled through mediation or conciliation, or through negotiations, because the issues involved are such that they can be adjusted and compromised.

MR. SMITH: And the work of the Conciliation Bureau of the Department of Labor has indicated that the Government has found that an effective method bringing to an end strikes over those causes? Is that so?

THE WITNESS: Yes; the work of the Conciliation Division of the United States Department of Labor and, if I may add, of the more important industrial States—the conciliation divisions of those States—have found that those strikes are more easily adjustable.

MR. SMITH: Is it also true that strikes that involve the right of the employees' organizations to be recognized as the collective bargaining agencies, are less easy to settle by the method of conference?

THE WITNESS: Yes; in the history of labor legislation it has been found that strikes in which the major issue is union recognition or right to organize for collective bargaining are the most difficult to adjust through conference or through mediation.

MR. SMITH: And is it not true that recognition of that fact as to their difficulty was one of the reasons which prompted Congress in enacting this Act to seek the elimination of the practices of the employers in refusing to recognize labor organizations for the purpose of collective bargaining?

THE WITNESS: The legislative history of this Act will show that the chief concern of Congress was to eliminate these strikes, and, therefore, remove that type of obstruction to commerce by the creation of this Board.

MR. SMITH: Therefore the prevention of interruption of commerce by strikes has been a concern of the Government over a long period of time, and the particular methods set out in this Act to prevent strikes are simply adapted to strikes caused by such practices of employers as are set forth in the Act?

THE WITNESS: Yes, that is true. The history of the role of Government in labor relations would show that this is the situation.

MR. WIRIN: I would like to request the Board to take judicial notice of the following:

The Annals of the American Academy of Political and Social Science, for March 1936, which volume, No. 184, deals with the problems of organized labor and so entitled; and particularly the following articles:

"Employee Representation by Labor Organization" by David J. Saposs, the witness, at page 192;

"Labor and Judicial Interpretation," by Alpheus Thomas Mason, at page 112; and an article entitled,

"The National Labor Board," by Lloyd K. Garrison, at page 138.

MR. EMERSON: Perhaps I had better ask a question of the witness.

BY MR. EMERSON:

Q Will you state whether or not the Annals of the American Academy of Political and Social Science is recognized as an authoritative source of information on social problems?

A It is one of the oldest scholarly publications issued in the United States, and is looked to by students of economics as one of the publications where they can expect to find articles by leading authors of the subjects which they discuss therein.

Q Is Professor Mason recognized as a leading authority in his field of labor problems?

A Profesor Mason, who teaches at Princeton University, has been regarded as an outstanding authority on labor law.

Q And Mr. Lloyd K. Garrison, what qualifications does he have in the field of labor relations?

A Mr. Lloyd K. Garrison is now the dean of the law school of the University of Wisconsin, and was formerly the Chairman of the first National Labor Relations Board.

Q Is that the predecessor of the present Board?

A The predecessor of the present Board, and he has been accepted as an authority in this field.

MR. CARMODY: I realize you did not testify with reference to strikebreaking activities, but I ask you this question, if you know:

Is it not true that in many cases where employers refuse to bargain collectively with their employees, but insist on individual bargaining, that when a strike comes, they make a collective bargain with a strikebreaking agency, or the leader of a strikebreaking agency for all of the employees who come in in place of the employees that go out? Is that not true?

THE WITNESS: Yes, it is. I find it to be the case that either the head of the detective agency acts as a drone, who does all the hiring of the detectives and guards to be used in the breaking of the strike and who very frequently collects a lump sum from the employer and then pays each one of these hired individuals whatever wages had been agreed upon.

MR. CARMODY: Does that strike you as anomalous position for an employer to find himself in?

THE WITNESS: Yes, it very clearly is a contradiction of his opposition to collective bargaining.

MR. CARMODY: Just one more question. I have been impressed during the past few days of these hearings with statements that practically all of the witnesses made who are expert in this field, that these efforts, that some regularization of employment relationships

began in the United States more than fifty years ago, and here we are, after fifty years of effort, and after literally hundreds of millions of dollars have been spent—dollars, of course, that must be paid for by people out of the goods of industry—and we are still fighting about the same thing, and we still have employers and their lawyers who maintain that the Government has no right to assist with these relations by the process of negotiation and by requiring that employers deal in a civilized way with employees.

What do you see ahead? Is it a completely futile thing or is there a tendency to improve this condition?

THE WITNESS: I believe that the only way that this condition can be improved, as has been shown in the history of the railroad industry, is through legislation that will protect the interests of the workers, the efforts of the workers to organize, for collective bargaining. That will, of course, bring the employers and the workers together, and once they learn to know each other, as has been shown in the history of a number of industries, orderly collective bargaining arrangements can be established.

And, even though there may be strikes occasionally, these strikes will be really tests of things which we usually find when people are engaged in a bargain, to see who can hold out the longest. But they won't be pitched battles in a war between the employers and the workers as has been shown in strikes for the right to organize, because the students of labor economics have discovered that the most violent, the most bitterly contested strikes, are the strikes over the issue for the right to organize.

MR. CARMODY: This is my final question, I promise.

I neglected yesterday to ask Mr. Bowers, when he was here, whether he knew who was in charge of that General Research Department of the law firm of Fosdick, Curtis and Belknapp. Do you remember?

THE WITNESS: Yes, Mr. Anderson; I forgot his first name.

MR. CARMODY: George Anderson?

THE WITNESS: Yes.

MR. CARMODY: Where did George Anderson go when he left that organization?

THE WITNESS: He became the head of the Consolidated Coal Company in West Virginia, a holding of the Rockefeller interests.

MR. CARMODY: And who succeeded George Anderson when he left what had then become the Bureau of Industrial Relations Counsellors?

THE WITNESS: Arthur Young.

MR. CARMODY: And where did Arthur Young come from?

THE WITNESS: He was the head of the Industrial Relations Department of the International Harvester Company, in charge of labor relations, and particularly of the company union set-up in that firm.

MR. CARMODY: Approximately how long did he remain as head of the Industrial Relations Counsellors, this organization which grew out of the Rockefeller interests?

THE WITNESS: He remained with them up until the latter part of 1933.

MR. CARMODY: Where did he go from there?

THE WITNESS: He became the vice president of the United States Steel Corporation, in charge of labor relations for the subsidiaries of that corporation.

MR. CARMODY: Do you know whether or not as a result of his activities, an employee representation plan, or some plan, has since been introduced into the United States Steel Corporation plant?

THE WITNESS: As the result of his activities, the United States Steel Corporation has introduced employee representation plans or company unions in all the subsidiaries of that corporation.

MR. CARMODY: Is Mr. Young generally looked upon as one of the outstanding authorities in the introduction of employee representation plans in the de-

velopment of the so-called company unions?

THE WITNESS: He is regarded as a leader in the whole personnel management movement of the group of employers which are supposed to deal with unions and believe either in individual bargaining or in dealing through employee representation plans or company unions.

MR. CARMODY: Do you know whether or not he has been an active member, and perhaps an officer of the American Management Association which was referred to yesterday?

THE WITNESS: He has been, yes. I have seen his name on their letterheads, and on their records.

MR. CARMODY: That is all; thank you.

MR. WIRIN: May it please the Board, in the course of these hearings there have been numerous references to official Government publications, as well as to other publications, which have been identified and referred to by witnesses, and of which we have asked the Board to take judicial notice.

I wonder if the Board would at this time take judicial notice of the matters that we have asked the Board to take judicial notice of?

CHAIRMAN MADDEN: The record may show that the Board does take judicial notice of these various books and publications and other authoritative documents which have been called to our notice.

The hearing will now adjourn.

(Whereupon the hearing was concluded at 6:15 o'clock p. m.)

That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Order to file petition for the enforcement of an order, etc.

Filed April 11, 1936

United States Circuit Court of Appeals for the Fifth Circuit
No. 8088

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

JONES & LAUGHLIN STEEL CORPORATION, RESPONDENT

A petition for the enforcement of an order of the National Labor Relations Board made on April 9, 1936, in "The Matter of Jones & Laughlin Steel Corporation and Amalgamated Association of Iron, Steel, and Tin Workers of North America, Beaver Valley Lodge No. 200", having been duly filed on April 11, 1936, by the National Labor Relations Board in the United States Circuit Court of Appeals for the Fifth Circuit, it is

Ordered that said petition be docketed as of April 11, 1936, and it is further

Ordered that upon the filing with the Clerk of a certified copy of a transcript of the proceedings of the National Labor Relations Board in the above entitled matter, the Clerk shall forthwith give notice thereof to the respondent, Jones & Laughlin Steel Corporation, at its offices in New Orleans, Louisiana, and in Aliquippa, Pennsylvania, by registered mail.

(Signed) SAM'L H. SIBLEY,
United States Circuit Judge.

NEW ORLEANS, LA., *April 11, 1936.*

Petition for the enforcement of an order, etc.

Filed April 11th, 1936

United States Circuit Court of Appeals for the Fifth Circuit

April Term, 1936. No. 8088

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JONES & LAUGHLIN STEEL CORPORATION, RESPONDENT

PETITION FOR THE ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The National Labor Relations Board (hereinafter referred to as the Board), pursuant to the authority conferred upon it by the provisions of an Act of Congress approved July 5, 1935 (Public, No. 198, 74th Congress, 49 Stat. 10, 29 U. S. C. A., Sec. 151 et seq.) known as the National Labor Relations Act, respectfully petitions this Honorable Court for the enforcement of a certain order issued by said Board in a proceeding instituted against respondent, Jones & Laughlin Steel Corporation. Said proceeding is known upon the records of the Board as Case No. C-57, the title thereof being "In the Matter of Jones & Laughlin Steel Corporation and Amalgamated Association of Iron, Steel, and Tin Workers of North America, Beaver Valley Lodge No. 200."

In support of such petition, petitioner respectfully shows:

(1) Respondent, Jones & Laughlin Steel Corporation, is, and at all times herein mentioned was, a corporation organized under and existing by virtue of the laws of the Commonwealth of Pennsylvania, and has and maintains an office and place of business, and transacts business, in the City of New Orleans, State of Louisiana.

(2) By reason of the matters alleged in paragraph (1) hereof, the Court has jurisdiction of this petition under Section 10 (e) of the said National Labor Relations Act.

(3) On the 23rd day of January 1936, a charge having theretofore been filed with the Board by Amalgamated Association of Iron, Steel, and Tin Workers of North America, Beaver Valley Lodge No. 200, the Board did issue its complaint charging that the respondent had engaged and was engaging in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, which said complaint, together with a notice of hearing thereon, was duly served upon respondent. Thereafter, said hearing, noticed for February 5, 1936, was postponed upon due notice to March 2, 1936. Thereafter, on February 27, 1936, the pro-

ceeding upon said complaint was duly transferred to said Board, and thereafter respondent duly filed its special appearance and answer.

(4) Thereafter, on the 2nd, 3rd, and 19th days of March and on the 2nd, 3rd, 6th, 7th, and 8th days of April 1936, the said Board duly held hearings upon the charges stated in said complaint, pursuant to due notice thereof. At said hearings testimony and other evidence with respect to the charges stated in said complaint were adduced by the several parties to said proceeding, including respondent, who was present and represented at certain of said hearings by counsel and by certain of its officers, agents, and employees.

(5) Thereafter, on the 9th day of April 1936, the Board having duly considered the matter and being sufficiently advised in the premises, and being of the opinion upon all of the testimony and evidence that respondent had been and then was engaged in certain unfair labor practices affecting commerce within the meaning of said National Labor Relations Act, duly stated its findings of fact and issued and entered the following order directed to respondent:

"ORDER

"On the basis of the findings and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Jones & Laughlin Steel Corporation:

"1. Cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

"2. Cease and desist from discouraging membership in the union or any other labor organization of its employees, by discrimination in regard to hire or tenure of employment or any term or condition of employment;

"3. Take the following affirmative action, which the Board finds will effectuate the policies of the Act;

"(a) Offer to Domenic Brandy, Angelo Volpe, Harry V. Phillips, Martin Dunn, George Maroll, Royal Boyer, Martin Gerstner, Angelo Razzano, Eli Bozich, and Ronald B. Cox employment in the respective positions formerly held by them with all rights and privileges previously enjoyed; and

"(b) Make whole said Domenic Brandy, Angelo Volpe, Harry V. Phillips, Martin Dunn, George Maroll, Royal Boyer, Martin Gerstner, Angelo Razzano, Eli Bozich, and Ronald B. Cox for any losses of pay they have suffered by reason of their discharge, by payment to each of them, respectively, of a sum equal to that which each

would normally have earned as wages, at the rate set out in the appendix, during the period from the date of his discharge to the date of offer of employment as ordered hereunder, less amounts earned by each during such period; and

"(c) Post immediately notices to its employees in conspicuous places in each shop and yard of the Aliquippa Works stating (1) that the respondent will not discharge or in any manner discriminate against members of, or those desiring to become members of, Beaver Valley Lodge No. 200, Amalgamated Association of Iron, Steel, and Tin Workers of North America, or persons assisting said organization or otherwise engaging in union activity, and (2) that such notices will be posted for a period of at least thirty (30) consecutive days from the date of posting.

"And it is further ordered that the complaint be, and is hereby dismissed, without prejudice, with respect to Giulio Yacobucci and Marko Lukich."

(6) The said order was duly issued and is, and at all times since its said issuance has been, in full force and effect.

Wherefore the Board petitions this Honorable Court for the enforcement of its said order of April 9th, 1936, and pursuant to Section 10 (e) of said National Labor Relations Act is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, and said order of the Board.

The Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent, and that this court take jurisdiction of the proceeding and of the questions determined therein, and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in such transcript, and upon the order made thereupon, a decree enforcing in whole said order of the Board and commanding respondent, its officers, agents, and representatives, to comply therewith.

(Signed) J. WARREN MADDEN,
(Signed) JOHN M. CARMODY,
(Signed) EDWIN S. SMITH,
National Labor Relations Board.

(Signed) CHARLES FAHY,
General Counsel,
National Labor Relations Board,
Washington, D. C.

DISTRICT OF COLUMBIA, *ss:*

J. Warren Madden, John M. Carmody, and Edwin S. Smith, being duly sworn, depose and say that they are the members of the National Labor Relations Board and make this affidavit on behalf of said Board; that they have read the foregoing petition and have knowledge of the facts stated therein; and that the statements made

is the foregoing petition are true to the best of their knowledge and belief.

(Signed) J. WARREN MADDEN.
JOHN M. CARMODY.
(Signed) EDWIN S. SMITH.

Subscribed and sworn to before me this 9th day of April 1936.

[SEAL] (Signed) JOHN E. LAWYER,
Notary Public.

Notary Public, District of Columbia. My Commission Expires September 8, 1939.

Argument and submission

Extract from the Minutes of June 1st, 1936

No. 8068

NATIONAL LABOR RELATIONS BOARD

vs.

JONES & LAUGHLIN STEEL CORPORATION

On this day this cause was called and, after argument by Robert B. Watts, Esq., Associate General Counsel, National Labor Relations Board, and Thomas I. Emerson, Esq., for petitioner, and Earl F. Reed, Esq., for respondent, was submitted to the Court.

Opinion of the court

Filed June 15th, 1936

United States Circuit Court of Appeals for the Fifth Circuit

No. 8068

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

JONES & LAUGHLIN STEEL CORPORATION, RESPONDENT

Petition for the Enforcement of an Order of the National Labor Relations Board

June 15, 1936

Before FOSTER, SIBLEY, and HUTCHESON, Circuit Judges.

By the COURT: The National Labor Relations Board has petitioned us to enforce an order made by it, which requires Jones & Laughlin

Steel Corporation, organized under the laws of Pennsylvania, to reinstate certain discharged employees in its steel plant in Aliquippa, Pa., and to do other things in that connection.

The petition must be denied because, under the facts found by the Board and shown by the evidence, the Board has no jurisdiction over a labor dispute between employer and employees touching the discharge of laborers in a steel plant who were engaged only in manufacture. The Constitution does not vest in the Federal Government the power to regulate the relation as such of employer and employee in production or manufacture.

"One who produces or manufactures a commodity, subsequently sold and shipped by him in interstate commerce, whether such sale and shipment were originally intended or not, has engaged in two distinct and separate activities. So far as he produces or manufactures a commodity, his business is purely local. So far as he sells and ships, or contracts to sell and ship, the commodity to customers in another state, he engages in interstate commerce. In respect of the former, he is subject only to regulation by the state; in respect of the latter, to regulation only by the federal government. Utah Power & L. Co. vs. Pfost, 286 U. S. 165, 182. Production is not commerce but a step in preparation for commerce. Chassaniol vs. Greenwood, 291 U. S. 584–587.

"We have seen that the word 'commerce' is the equivalent of the phrase 'intercourse for the purposes of trade.' Plainly the incidents leading up to and culminating in the mining of coal do not constitute such intercourse. The employment of men, the fixing of their wages, hours of labor and working conditions, the bargaining in respect of these things—whether carried on separately or collectively—each and all constitute intercourse for the purposes of production, not of trade. The latter is a thing apart from the relation of employer and employee, which in all producing occupations is purely local in character. Extraction of coal from the mine is the aim and the completed result of local activities. Commerce in the coal mined is not brought into being by force of these activities but by negotiations, agreements, and circumstances entirely apart from production. Mining brings the subject matter of commerce into existence. Commerce disposes of it." Carter vs. Coal Company, — U. S. — decided May 18, 1936.

That the employer has a very large business, the interruption of which by a strike of employees which might happen, and that in consequence of such strike production might be stopped and interstate commerce in the products affected, does not make the regulation of the relation justified under the commerce power of Congress, because the possible effect on interstate commerce is too remote to warrant Federal invasion of the State's right to regulate the employer-employee relation. Nor is it important that the employer imports part of his raw materials in interstate commerce and sells

and exports a large part of his product in interstate commerce, which imports and exports would possibly be stopped by a possible strike. The employers' entire business thus connected together does not, as respects Federal power, make a case different from that in which importation of materials, manufacture of them, and sale and export of the product are conducted by three persons. The employer here by doing all three things does not alter the respective constitutional spheres of the Federal and State governments. The making and fabrication of steel by Jones & Laughlin Steel Corporation is production regulable by the State of Pennsylvania, notwithstanding the corporation also engages in interstate commerce regulable by Congress in bringing in its raw materials and again in selling and delivering its products. No specific present intent appears to impede or destroy interstate commerce by means of a strike in a manufacturing plant, or other like direct obstruction to or burden on interstate commerce. The order we are asked to enforce is not shown to be one authorized to be made under the authority of Congress. Carter vs. Carter Coal Co., supra.

The petition is denied.

Judgment

Extract from the Minutes of June 15th, 1936

No. 8088

NATIONAL LABOR RELATIONS BOARD

vs.

JONES & LAUGHLIN STEEL CORPORATION

This cause came on to be heard on the petition of the National Labor Relations Board, for the enforcement of an order of the National Labor Relations Board, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged, and decreed by this Court, that said petition be, and the same is hereby, denied.

Petition for rehearing

Filed July 6, 1936

United States Circuit Court of Appeals for the Fifth Circuit

No. 8068

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JONES & LAUGHLIN STEEL CORPORATION, RESPONDENT

Petition of the National Labor Relations Board for rehearing

To the Honorable Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

The National Labor Relations Board respectfully petitions this Honorable Court for a rehearing of the above-entitled case, upon the following grounds:

1. The National Labor Relations Act, as applied to respondent, is a protection of that part of respondent's operations which constitute its interstate commerce and is not a regulation of that part of its operations which constitute manufacture or production. The Act, as here applied, is therefore valid under the commerce clause of the Constitution notwithstanding it may incidentally affect certain of the relations between one engaged in interstate commerce and his employees, some of whom are engaged in production. These employees, unless the threat of industrial warfare is alleviated, may, as experience has shown and Congress has found, directly and intentionally interrupt interstate commerce. The express purpose of Congress to prevent such direct and intentional burdens to commerce itself, and to provide a means of settling disputes which lead thereto, distinguishes this Statute from the Bituminous Coal Conservation Act condemned in the case of Carter v. Carter Coal Company (U. S. Sup. Ct., May 18, 1936).

2. A strike or boycott or similar industrial disturbance on the part of employees of the respondent, though including production employees, is subject to the regulatory power of commerce under the commerce clause (Coronado Coal Co. vs. United Mine Workers, 268 U. S. 295). Such regulation, designed to protect commerce and not to regulate the details of production, is not a regulation of production or manufacture such as was condemned in Carter vs. Carter Coal Company. See The Virginian Railway Company vs. System Federation No. 40, decided by the Circuit Court of Appeals for the Fourth Circuit, June 18, 1936.

3. A strike or boycott or similar industrial strife among production employees is, by reason of the nature of such strife, not limited to those engaged in production or to production itself, but may, and often does, as experience shows, include those actually engaged in commerce. The Virginian Railway Company vs. System Federation No. 40, supra.

4. Experience having shown and Congress having found, and these findings not being disputed but on the contrary being substantiated by the record, that strikes, though engaged in by persons who when not on strike may be engaged in production, have the intent of burdening or obstructing commerce, thus constituting conspiracies in restraint of trade or commerce under the Anti-Trust Laws, Congress may protect commerce by removing the causes of such strikes. The reasonable fear by Congress of the likelihood of such burdens or obstructions, "expressed in this remedial legislation" (258 U. S. 520–521), serves the purpose of a specific intent to interrupt commerce in this case. Compare Swift & Company vs. United States, 196 U. S. 375, with Stafford vs. Wallace, 258 U. S. 495. See 258 U. S. pp. 420–421. See also Chicago Board of Trade vs. Olsen, 261 U. S. 1, and compare with United States vs. Patten, 226 U. S. 525. See the language of the Supreme Court in the first Coronado case, 259 U. S. 344, 410.

5. The type of regulation of production condemned in the Carter case is entirely different from the employment of means to protect commerce itself. See concurring opinion of Chief Justice Hughes in that case: "Congress thus has adequate authority to maintain the orderly conduct of interstate commerce and to provide for the peaceful settlement of disputes which threaten it."

The problem to which the Act is directed—the peaceful settlement and the diminution of industrial strife resulting in enormous burdens upon interstate and foreign commerce—and the means adopted in the Act to aid the solution of this problem, which has engaged the considered attention of the government for decades, impels us respectfully and earnestly to request a rehearing. The nature of the problem, and the need for remedial legislation such as this Act, is now being amply illustrated by the threatened strife in the steel industry which will by its nature directly burden the interstate commerce of respondent and the steel industry generally, and well may, as Congress has found often occurs, intentionally burden such commerce.

Respectfully,

NATIONAL LABOR RELATIONS BOARD,
By CHARLES FAHY,
ROBERT B. WATTS,
Attorneys for the National Labor Relations Board.

WASHINGTON, D. C.

CERTIFICATE OF COUNSEL

Come now Charles Fahy and Robert B. Watts, attorneys for the National Labor Relations Board, and certify that they have read and know the contents of the foregoing petition, and that said petition is filed in good faith and not for purposes of delay.

CHARLES FAHY,
ROBERT B. WATTS,
Attorneys for National Labor Relations Board.

Order denying rehearing

Extract from the Minutes of July 15th, 1936

No. 8088

NATIONAL LABOR RELATIONS BOARD

vs.

JONES & LAUGHLIN STEEL CORPORATION

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

CLERK'S CERTIFICATE

United States of America

United States Circuit Court of Appeals for the Fifth Circuit

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 971 to 988 next preceding this certificate contain full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 8088, wherein National Labor Relations Board is petitioner, and Jones & Laughlin Steel Corporation is respondent, as full, true, and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 970 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 23rd day of July A. D. 1936.

[SEAL]

OAKLEY F. DODD,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.
By E. V. VERMILYE, *Deputy Clerk.*

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1936

No. ———

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JONES & LAUGHLIN STEEL CORPORATION, RESPONDENT

Stipulation with respect to exhibits

It is Hereby Stipulated and Agreed by and between the above-named parties through their respective attorneys that the exhibits which were introduced in evidence in the proceeding before the National Labor Relations Board were filed with the United States Circuit Court of Appeals for the Fifth Circuit. In the proceeding before the United States Circuit Court of Appeals for the Fifth Circuit, the above-named parties stipulated and agreed that said exhibits did not need to be printed as part of the printed record on appeal in said United States Circuit Court of Appeals for the Fifth Circuit, but that either party to said appeal could refer to said exhibits in its brief or oral argument. Said exhibits remained as part of the record before said United States Circuit Court of Appeals for the Fifth Circuit as physical exhibits and were not printed.

It is Further Stipulated and Agreed that said exhibits need not be printed in the record before the Supreme Court of the United States, but that said exhibits shall be filed with the Supreme Court of the United States as physical exhibits. The above-named parties may refer to said exhibits in their briefs or arguments and said exhibits shall be available for the inspection of the Supreme Court of the United States, and said exhibits shall remain as part of the record before the Supreme Court of the United States.

CHARLES FAHY,
ROBERT B. WATTS,
Attorneys for National Labor Relations Board.

EARL F. REED,
JOHN E. LAUGHLIN, JR.
Attorneys for Jones & Laughlin Steel Corporation.

[Copy]

Charles M. Thorp, Roy G. Bostwick, Earl F. Reed, Charles M. Thorp, Jr., Clyde A. Armstrong, John E. Laughlin, Jr., K. G. Jackson, D. W. Ebbert, James A. Bell.

LAW OFFICES OF THORP, BOSTWICK, REED & ARMSTRONG,
2819-2821 GRANT BUILDING,
Pittsburgh, Pa., September 23, 1936.

MALCOLM F. HALLIDAY, ESQ.,
National Labor Relations Board,
Washington, D. C.

Re: Jones & Laughlin Steel Corporation

DEAR SIR: In accordance with the request set forth in your letter of September 22, we are returning herewith executed original of a stipulation with respect to the exhibits, to be lodged with the Supreme Court of the United States in National Labor Relations Board vs. Jones & Laughlin Steel Corporation. We are willing to dispense with the printing of the exhibits, if the Court approves, on the condition, however, that the special appearance and answer of Jones & Laughlin Steel Corporation to the complaint of the National Labor Relations Board, which was omitted from the record in the Circuit Court of Appeals, be certified to the Supreme Court as a part of the record. You will recall that this pleading was inadvertently omitted before and we think it essential that it be made a part of the record before the Supreme Court.

We also wish it understood that we are executing this stipulation, in order to save time and expense and that as a consequence, we will expect the case to be brought before the Supreme Court and argued without any delay, if certiorari should be granted.

Very truly yours,

(S.) THORP, BOSTWICK, REED & ARMSTRONG.

JEL:G
enc.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD, SIXTH REGION

Case VI C 6

IN THE MATTER OF JONES & LAUGHLIN STEEL CORPORATION AND AMALGAMATED ASSOCIATION OF IRON, STEEL AND TIN WORKERS OF NORTH AMERICA, BEAVER VALLEY LODGE No. 200

Special appearance and answer of Jones & Laughlin Steel Corporation

Now comes Jones & Laughlin Steel Corporation, by Earl F. Reed and Thorp, Bostwick, Reed & Armstrong, its attorneys, appearing specially for the purpose of objecting to the jurisdiction of the National Labor Relations Board, and J. Warren Madden, Chairman,

John M. Carmody and Edwin S. Smith, members, and, saving and reserving all of its legal objections and defenses in this case, files its answer to the complaint issued by said National Labor Relations Board, acting by its Regional Director for the Sixth Region, as follows:

1. The averments of Paragraph 1 are admitted. The post office address of the respondent is Third Avenue and Ross Street, Pittsburgh, Pa.

2. The averments of Paragraph 2 are denied as stated. Respondent admits that it purchases some of the raw materials used in its manufacture of iron and steel products from suppliers situated in States other than Pennsylvania. Respondent admits that such raw materials are transported from other States to its plant in Aliquippa, Pennsylvania. Respondent admits that it sells some of the iron and steel products manufactured at such plant to purchasers situated in States other than Pennsylvania. Respondent admits that it delivers such products to carriers, which transport such products to those of respondent's customers who purchase said products for delivery into States other than Pennsylvania. Except as in this paragraph specifically admitted, respondent denies each and every averment of fact in said paragraph 2 contained. Respondent is advised by counsel and therefore avers that the matters set out in said pargaraph 2, even if true, which respondent denies as aforesaid, would not make respondent subject to the provisions of the National Labor Relations Act or to the jurisdiction of the National Labor Relations Board.

3. Respondent admits that it has discharged the individuals named in pargaraph 3 of the complaint, but avers that some of the dates therein set forth are incorrect, in that Martin Dunn was discharged on July 8, 1935; Gulio Yacobucci on December 11, 1935; and Eli Bozich on January 16, 1936. Respondent admits that it has not reinstated any of the individuals mentioned in said paragraph 3 and avers that each of said individuals was discharged for good and sufficient cause, as hereinafter set forth.

4. Respondent admits that Marco Lukich was demoted on or about the 5th day of August 1935. Respondent avers that Lukich had been unsatisfactory and incompetent in the work he was doing, had repeatedly been warned that unless his work improved it would be necessary for the respondent to make a change in his occupation, if not to dismiss him entirely. He was tried for a time on work other than his original work as millwright and proved very inefficient and careless in the work to which he was thus assigned. He was again repeatedly warned that his work must improve, but made no apparent effort to improve, and, on August 5, 1935, the respondent again found it necessary to transfer Marco Lukich.

5. The allegations of Paragraph 5 of the complaint are denied. Respondent denies that the reason for the discharge and demotion of the individuals therein described was the union affiliation and activity set forth in said paragraph. Respondent avers that in each and every

instance the discharges and demotion therein described were made because of inefficiency in work, violation of the Company's rules, conduct of the delinquent individual which endangered his fellow workmen, or some other cause, which made it necessary for the respondent to dismiss the men discharged, and which would have necessitated the discharge or dismissal of any other man in the respondent's employ who had been guilty of the same offense or inefficiency.

6. Paragraph 6 of the complaint avers a conclusion of law and respondent is advised by its counsel that no answer thereto need be made. Nevertheless, respondent is advised, believes and avers that it has not violated any of the provisions of said National Labor Relations Act in any instance averred in said complaint; and that respondent has not been guilty of any restraint, coercion or unfair labor practice, within the meaning of said Act.

7. Respondent denies any allegation of Paragraph 7 of the complaint which is not a conclusion of law. Respondent is advised that in so far as conclusions are averred in said Paragraph 7, no answer is required of respondent. Respondent denies that it did discriminate or is discriminating against the individuals therein named and denies that it did discourage or is discouraging membership in said Beaver Valley Lodge No. 200, and denies that it did engage in or is engaging in any unfair labor practice, within the meaning of said National Labor Relations Act, in any discharges described in said complaint, or in the demotion therein charged.

8. Respondent denies each and all of the allegations of Paragraph 8 of the complaint; denies that it has been guilty of unfair labor practices; denies that it is engaged in commerce amongst the several States; and denies that by any act of respondent, including the acts of which complaint is made in this case, interstate commerce has been burdened or obstructed, or the free flow thereof in any way impeded. And respondent denies that its exercise of its lawful rights as an employer and citizen of the United States have tended or led to labor disputes or in any [redacted] burdened or obstructed commerce or the free flow thereof.

9. Respondent denies the averments of Paragraph 9 of the complaint. Respondent is advised by counsel that said paragraph avers a conclusion and need not be answered; but respondent denies that any of the acts, of which complaint is made, constitute an unfair labor practice within the meaning of the National Labor Relations Act and denies that they in any way affect interstate commerce.

10. Further answering the complaint, the respondent avers:

(a) Said complaint is insufficient in law, in that it does not charge or aver any facts constituting an offense against or violation of the laws of the United States, and in that the subject matter thereof is not within the constitutional jurisdiction of the National Labor Relations Board.

(b) The National Labor Relations Act, approved July 5, 1935, under which the National Labor Relations Board assumes to act and under which said complaint is issued, is invalid, void and of no effect, in that said Act and the acts of said Board pursuant thereto, attempt to deprive the respondent of its freedom of contract and property without due process of law, in violation of the Constitution of the United States, and particularly Article V of the Amendments thereto.

(c) The National Labor Relations Act, in purporting to authorize said Board to hear and determine the matters described in said complaint, denies respondent the right of trial by jury, in violation of the Constitution of the United States, and particularly Article VII of the Amendments thereto.

(d) Section 7 of the National Labor Relations Act, upon which said complaint is based, is invalid, void and of no effect, in that it is directly contrary to the Constitution of the United States of America and to decisions of the Supreme Court of the United States construing said Constitution, and said Board, in asserting jurisdiction to hear said complaint, is acting unlawfully and in defiance of the Constitution and said decisions.

(e) The National Labor Relations Act, in purporting to confer jurisdiction upon said National Labor Relations Board to hear and determine the matters charged in said ocmplaint, is illegal, void and of no effect, by reason of the fact that it purports to confer upon said Board judicial power in violation of the Constitution of the United States, and particularly Section I and Section II (1) of Article III thereof.

(f) The National Labor Relations Act, and particularly Section 7 thereof, are illegal, void and of no effect, in that they constitute an arbitrary and unreasonable interference with the contractual relationships between the respondent and its employees, and with the right and freedom of the respondent, as guaranteed by the Constitution of the United States, to enter into contractual relations with its employees, all in violation of the Constitution of the United States, and particularly Article V of the Amendments thereto.

(g) The matters charged in said complaint and over which said Board is assuming to exercise jurisdiction, concern transactions and relations between employer and employees which are local and intrastate in character and are not subject to regulation by the Congress of the United States through said National Labor Relations Act or otherwise.

(h) The National Labor Relations Act can not confer authority on said Board to investigate or determine, or assume jurisdiction over matters or controversies between employers and employees engaged in manufacturing or production, for the reason that such activities are not and do not affect interstate commerce, and therefore are not subject to said Act, and for the reason that the business of the respondent and its relationships with its employees are not in and do not affect interstate commerce.

(i) Said Board, through its agents and attorneys, having taken an active part in the institution of the above entitled proceedings and being the prosecutor thereof, is disqualified from exercising or purporting to exercise a judicial function, and from hearing said proceedings and making orders therein.

(j) The National Labor Relations Act, under any construction consistent with the provisions of the Constitution of the United States of America, can have no application to respondent or any transactions or relations between respondent and its employees.

Wherefore, the respondent, Jones & Laughlin Steel Corporation, having fully answered the above described complaint, prays that the same may be dismissed.

(Signed) EARL F. REED,
(Signed) THORP, BOSTWICK, REED & ARMSTRONG,
Atorneys for Jones & Laughlin Steel Corporation, Respondent.

STATE OF PENNSYLVANIA,
City of Allegheny, ss:

Before me, the undersigned authority, personally appeared S. E. Hackett, who being duly sworn, according to law, deposes and says that he is President of Jones & Laughlin Steel Corporation, respondent herein, and its agent in its behalf duly authorized; that in so far as the averments of fact set forth in the foregoing answer are made upon his own knowledge, they are true and correct, and that in so far as said averments of fact are made upon information received from others, he believes them to be true and expects to prove the truth thereof upon hearing in this case.

(Signed) S. E. HACKETT.

Sworn to and subscribed before me this 26th day of February, 1936.
[SEAL] (Signed) S. A. McFARLAND,
Notary Public.

S. A. McFarland, Notary Public. My Commission expires April 2nd, 1937.

United States Circuit Court of Appeals for the Fifth Circuit

No. 8088

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JONES & LAUGHLIN STEEL CORPORATION, RESPONDENT

CLERK'S OFFICE:

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify the foregoing to be a true copy of the Special Appearance and Answer of Jones &

Laughlin Steel Corporation, which was filed in this Court in the original in the above entitled and numbered cause, and which was transmitted to the Honorable Supreme Court of the United States.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the City of New Orleans, Louisiana, this 26th day of September, A. D. 1936.

[SEAL]

OAKLEY F. DODD,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

(Endorsement on cover:) No. 8088. United States Circuit Court of Appeals for the Fifth Circuit. National Labor Relations Board, petitioner, vs. Jones & Laughlin Steel Corporation, respondent. Copy of Special Appearance and Answer of Jones & Laughlin Steel Corporation.

U. S. GOVERNMENT PRINTING OFFICE: 1936

No. 419. October Term, 1936

Order allowing certiorari

Filed November 9, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, and the case is assigned for argument immediately following Nos. 365 and 469.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

○

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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. ——

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JONES & LAUGHLIN STEEL CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit, entered in the above cause on June 15, 1936 (R. 977), denying a petition by the National Labor Relations Board for the enforcement of its cease and desist order against the Jones & Laughlin Steel Corporation, made pursuant to the National Labor Relations Act.

OPINIONS BELOW

The findings of fact and the order of the National Labor Relations Board (R. 23–45), are not re-

ported. The opinion of the Circuit Court of Appeals (R. 975–977) is reported in 83 F. (2d) 998.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered June 15, 1936 (R. 977). A petition for rehearing was denied July 15, 1936 (R. 980). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether, as applied to respondent, the National Labor Relations Act is a valid exercise of the power of Congress to regulate commerce among the States and with foreign nations.

2. Whether the provisions of the National Labor Relations Act here involved violate Article III of the Constitution in that they improperly delegate judicial powers to the National Labor Relations Board.

3. Whether the provisions of the National Labor Relations Act here involved violate the Fifth Amendment to the Constitution in that they deprive respondent of liberty or property without due process of law.

4. Whether the provisions of the National Labor Relations Act here involved violate the Seventh Amendment to the Constitution in that they improperly deprive respondent of the right of trial by jury.

STATUTE INVOLVED

The National Labor Relations Act is printed as an Appendix, *infra,* pp. 15–33.

STATEMENT

On January 23, 1936, a written charge against respondent, the Jones & Laughlin Steel Corporation, was filed with the Regional Director for the Sixth Region of the National Labor Relations Board, pursuant to Section 10 (b) of the National Labor Relations Act, *infra* (R. 6–11). The charge was filed by the Beaver Valley Lodge No. 200, Amalgamated Association of Iron, Steel & Tin Workers of North America, and alleged that the company had engaged in and was continuing to engage in certain unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act, *infra* (R. 6).

Pursuant to Section 10 (b) of the Act, the Regional Director issued and served upon respondent a complaint and notice of hearing (R. 12–16). The complaint alleged that respondent had engaged in and was engaging in unfair labor practices prohibited by subsections (1) and (3) of Section 8, in that respondent was interfering with, coercing, and restraining its employees in their self-organization and free choice of representatives for purposes of collective bargaining or other mutual aid or protection and had discharged and demoted employees because they had joined the

above-named labor organization, in order to discourage membership therein.

On February 27, 1936, respondent filed a special appearance and answer, admitting the discharges and demotion, but averring that in all cases they were made because of inefficiency and violation of respondent's rules. Respondent also asserted that the Act was unconstitutional upon several grounds, and that its activities were intrastate and not subject to regulation by Congress or the Board (Bd. Exh. 1).

Extensive hearings were held before the Board. At the close of the evidence on the nature of respondent's business, respondent moved to dismiss the proceeding for lack of jurisdiction (R. 129). The motion was denied, whereupon counsel for respondent withdrew from further participation in the hearings (R. 130).

On April 9, 1936, the Board handed down its decision setting forth its findings of fact (R. 23–43) and entered the order here in question (R. 44–45). These findings may be summarized as follows:

Respondent is a Pennsylvania corporation which, together with its 19 subsidiaries, acquires, transports, manufactures, sells, and distributes a diversified line of steel, pig iron, and sundry ores, and other materials. It is the fourth largest enterprise of its kind in the United States, employing over 22,000 persons in its two plants at

Pittsburgh and Aliquippa, Pennsylvania. About 10,000 are employed at the latter plant. (R. 24.)

Like all large units of the steel industry, respondent is completely integrated. It owns and operates ore, coal and limestone properties and transports these essential materials in interstate commerce to its works by its own lake steamships, tugboats and barges, manned by its employees. Respondent owns, and operates by its own employees, two terminal railroads, one at each plant, over which it receives and distributes materials and products. Each system of tracks is connected directly with all parts of the mills and yards which it serves, as well as with an important interstate trunk line. Respondent alone makes 97 percent of the shipments over the Pittsburgh & Lake Erie Railroad which originate at Aliquippa. (R. 24–25, 29–30.)

Many of respondent's employees are engaged in the distribution of its products in interstate commerce. Large quantities of steel and pig iron are shipped from Aliquippa to its warehouses in Chicago, Detroit, Cincinnati, and Memphis, the shipments to the last two cities named being by respondent's own transportation equipment, manned by its employees. In Long Island City, New York, and New Orleans, Louisiana, respondent operates structural steel fabricating shops in connection with the warehousing of semifinished materials sent there from Pittsburgh and Aliquippa.

Sales offices are maintained in twenty cities of the United States, and there is a wholly owned subsidiary devoted exclusively to the distribution of respondent's product in Canada. Enormous movements and transactions in interstate commerce are constantly carried on by respondent. In all, 80 percent by value of the material received at the Aliquippa works originates outside the State of Pennsylvania, and 75 percent of the product of that plant is sold and shipped in interstate commerce. (R. 25–27.) Most of the production at the Aliquippa plant is according to special order. (R. 30.)

Many of respondent's employees at Aliquippa are members of Beaver Valley Lodge, No. 200, of the Amalgamated Association of Iron, Steel, and Tin Workers. The ten employees whose discharge led to the proceeding at bar were dismissed in the period from July 1935 to January 1936. All were active leaders of the Union; several were officers, and others were leaders of special social groups. In most cases slight reasons were assigned for the discharges—reasons not applied to others—and each discharge followed hurriedly upon the discovery of some possible pretext. (R. 33–42.)

The ten employees discharged may be classified generally as engaged in the production feature of respondent's operations at the Aliquippa works; that is, employees engaged in various duties incident to normal plant operations, such as operating a crane, inspecting motors, operating a nail ma-

chine, and the like (R. 33–40). The labor organization of which they are members, however, is of the inclusive industrial type, extending its organization efforts to employees in and around the iron and steel mills, many of whom are not engaged in production. The other labor organization here involved, the Plan of Employee Representation, sponsored by respondent, is open to all of respondent's employees at Aliquippa, including, as indicated above, many engaged in interstate commerce. (R. 33, Bd. Exh. 53.)

In conclusion, the Board found that any cessation of operations at Aliquippa would have a direct and substantial effect on interstate commerce. It also found that the acts of respondent tended to cause labor disputes which burden and obstruct commerce and the free flow of commerce. (R. 29–30, 43.)

On the basis of these findings, the Board concluded, as a matter of law, that respondent was engaging in unfair labor practices within the terms of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act (R. 43–44). It therefore issued an order requiring respondent to cease and desist from practices tending to interfere with or restrain the organization of its employees; to reinstate, with back pay, the ten men discharged in the commission of such unfair labor practices; and to post notices in the shops and

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yards at the Aliquippa plant saying that the company had complied with the order. (R. 44–45.)

On April 11, 1936, the Board filed in the court below its petition for the enforcement of its order (R. 972–974), and on May 9, 1936, filed an amendment thereto (R. 45a). On June 15, 1936, the court entered its judgment denying the petition (R. 977) for the reason that the order transcended the authority of Congress under the commerce clause of the Constitution. The court did not pass upon the other constitutional objections urged by respondent.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that the order of the Board herein was not shown to be one authorized to be made under the authority of Congress.

(2) In construing the Board's order in this case as being directed merely to respondent's production operations and production employees, rather than to the protection of respondent's interstate commerce against direct and substantial burdens brought about by industrial strife among any or all of respondent's employees, as well as others.

(3) In holding that the power of Congress to protect interstate commerce from the burdens and obstructions of industrial strife is dependent upon a specific present intent to impede or destroy such commerce.

(4) In holding that a strike or boycott originating among respondent's production employees would result merely in stopping production with an effect on interstate commerce too remote to warrant Federal regulation to prevent such dispute, contrary to the findings by Congress based on a study of the effects of such disputes, and contrary to the facts in the record, both of which factual bases justify the conclusion that such a strike would constitute a direct burden upon and obstruction of interstate commerce itself.

(5) In holding that the Act as applied herein is not an appropriate exercise of the power and responsibility of Congress under the commerce clause of the Constitution to protect interstate commerce from burdens and obstructions from whatever source.

(6) In holding in effect that the particular origin of industrial strife characterizes the nature of the resulting burden or obstruction upon interstate commerce, and in not judging the nature of such burden or obstruction in its relation to interstate commerce, from the character and potentialities of the strife itself.

(7) In holding that the decision of this Court in *Carter* v. *Carter Coal Company,* Nos. 636 and 651, October term, 1935, decided May 18, 1936, involving the Bituminous Coal Conservation Act of 1935, was controlling as to the non-applicability of the National Labor Relations Act under the facts of this case.

(8) In failing to hold that the Act, as here applied, is not in contravention of the Fifth Amendment or any other provision of the Constitution.

(9) In denying the petition of the National Labor Relations Board.

REASONS FOR GRANTING THE WRIT

1. The questions presented in the instant case are of the utmost public importance.

The National Labor Relations Act is the culmination of a long series of attempts by the Federal Government to deal with the national problem presented by labor disputes which obstruct and burden the free flow of interstate and foreign commerce. The gravity and national character of the problem have long been realized. Numerous and extensive studies of the causes of disputes, and of effective ways of preventing their occurrence, have been made by both Congressional and Presidential Committees since 1882. On many occasions Federal intervention in particular disputes has been found necessary to protect interstate and foreign commerce from serious harm, existing or threatened. The present Act, an outgrowth of this experience, attempts to go beyond *ad hoc* interference and, in brief, to apply to other enterprises in interstate commerce the principles successfully applied to railroads by the Railway Labor Act of 1926, approved and upheld in *Texas & New Orleans Rail-*

road v. *Brotherhood of Railway Clerks,* 281 U. S. 548.

The court below has held that the application of this Act to respondent is beyond the power of Congress under the commerce clause of the Constitution. Whether the power of the Federal Government is thus limited is a question of vital interest to the commercial welfare of the nation. It is submitted that the public interest will be promoted by the settlement in this Court of the questions involved.

2. The decision of the Circuit Court of Appeals that the order of the Board was not within the power of Congress is not in harmony with the principles laid down by this Court.

Congress is fully empowered to protect interstate commerce from burden and injury, however local may be the effective causes. *Stafford* v. *Wallace,* 258 U. S. 495; *Board of Trade* v. *Olsen,* 262 U. S. 1; *United States* v. *Ferger,* 250 U. S. 199. More specifically, it has adequate authority, as invoked in this Act, to maintain the orderly conduct of interstate commerce by providing for the peaceful settlement of disputes which recurrently burden it or threaten so to do. *Texas & New Orleans Railroad* v. *Brotherhood of Railway Clerks,* 281 U. S. 548. In many operations besides railroad transportation, labor disputes can, and Congress has correctly found in the recitals of the Act that

they do, immediately burden and obstruct commerce. The reasonable fear by Congress of the likelihood of the recurrence of such burdens or obstructions serves the purpose of a specific intent to interrupt or burden interstate commerce in the particular case. *Stafford* v. *Wallace, supra,* pp. 520–521; *Board of Trade* v. *Olsen,* 262 U. S. 1, 37; *United Mine Workers* v. *Coronado Coal Co.,* 259 U. S. 344, 408.

A. L. A. Schechter Corp. v. *United States,* 295 U. S. 495, and *Carter* v. *Carter Coal Company,* Nos. 636 and 651, decided May 18, 1936, are not to the contrary. In those cases the Court held unconstitutional the regulation of wages and hours in activities occurring after the movement of interstate commerce has ceased or before it has begun, but made it clear that where the activity occurs, as in the present case, in the midst of a well-defined flow of commerce, it is still governed by the rule of *Stafford* v. *Wallace* and *Board of Trade* v. *Olsen, supra.*

Moreover, the *Schechter* and *Carter* cases deal with an entirely different type of regulation. They concern labor provisions which sought under the commerce clause to regulate hours and wages of production employees so as to stabilize production costs and thus to stabilize interstate commerce in poultry and coal. The present Act does not regulate hours or wages. It is directed solely to the protection of interstate commerce itself from the

actual interruption, burden and obstruction caused by employer-employee strife, such as strikes and boycotts. While, as a means to such protection, the present order restrains the conduct of a corporation engaged extensively in interstate commerce toward its production employees, among others, this does not make the order a regulation of production operations rather than a regulation of commerce. The relation to production, if it may be said to exist at all, is incidental and the regulation is permissible because necessary to prevent employer-employee conflict under such factual circumstances and of such a nature as would immediately, directly, and substantially burden or obstruct the actual physical movement of, and continuous trading in, commodities in interstate commerce. While the *Carter* case did deal with a provision of the Bituminous Coal Conservation Act relating to collective bargaining, that provision was considered merely a subordinate part of the wage and hour provisions, and as a means of fixing wages and hours in production. Neither case, therefore, considered or passed upon the issue presented here.

3. The record meets the requirements set forth in *Borden's Co.* v. *Baldwin*, 293 U. S. 194. Extensive evidence was taken (R. 399–970) and findings made by the Board (R. 27–31, 42–43) regarding the steel industry, the effect of labor disputes upon interstate commerce, and the appropriateness of the

means provided in this Act for the elimination or mitigation of such disputes.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Fifth Circuit should be granted.

STANLEY REED,
Solicitor General.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

SEPTEMBER 1936.

APPENDIX

NATIONAL LABOR RELATIONS ACT (ACT OF JULY 5, 1935, C. 372, 49 STAT. 449; U. S. C., SUP. I, TITLE 29, SECS. 151 ET SEQ.)

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials of manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

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The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the

purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133 [1] approved June 14, 1935.

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all

[1] So in original.

the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of

conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified

from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership

in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain [1] such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

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[1] So in original.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals

to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds

for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript

of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board

shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of serv-

ice of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a)), as amended from time to time, or of section 77 B, paragraphs (l) and (m) of the Act ap-

proved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

Approved, July 5, 1935.

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Act of September 21, 1922, c. 369, 42 Stat. 998 (U. S. C., Title 7, c. 1) 32

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First Annual Report, N. L. R. Bd. (1936) 23, 28

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Pepper, *Injunctions in Labor Disputes*, 40 A. B. A. Rep. 177 (1924) 28
Perlman & Taft, *History of Labor in the United States* 25
Report on Meat Packing Industry, Federal Trade Commission (1919) 68
Rules and Regulations of the N. L. R. Bd., Art. II, Sec. 2 3
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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 419

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JONES & LAUGHLIN STEEL CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR NATIONAL LABOR RELATIONS BOARD

OPINION BELOW

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit (R. 975–977) is reported in 83 F. (2d) 998. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 23–45) are reported in 1 N. L. R. B. 503 (1936).

JURISDICTION

The judgment of the United States Circuit Court of Appeals for the Fifth Circuit was entered on June 15, 1936 (R. 977). A petition for rehearing

was denied on July 15, 1936 (R. 980). Petition for a writ of certiorari was filed on September 30, 1936, and was granted on November 9, 1936. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the National Labor Relations Act, as applied to this respondent, is a valid exercise by Congress of its power to regulate commerce among the States.

2. Whether the provisions of Section 8, subdivisions (1) and (3) of the National Labor Relations Act, as applied to this respondent, are consistent with the Fifth Amendment.

3. Whether the provisions of the National Labor Relations Act, as here applied, deprive respondent of the right of trial by jury guaranteed in the Seventh Amendment.

4. Whether the provisions of the National Labor Relations Act, as here applied, deprive respondent of the right of free speech guaranteed by the First Amendment.

5. Whether respondent may question the validity of provisions or applications of the Act other than those here invoked against it, and if so, whether the validity of such other provisions and applications is in issue here because of their separability.

STATUTE INVOLVED

The National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; U. S. C., Sup. I, Title 29, Sec. 151 *et seq.*) is printed as an Appendix to the brief for the National Labor Relations Board in *The Associated Press* v. *National Labor Relations Board,* No. 365, October Term, 1936, and is also summarized at pp. 3–8 of that brief.

STATEMENT

On January 23, 1936, a written charge against the Jones & Laughlin Steel Corporation, the respondent, was filed with the Regional Director for the Sixth Region of the National Labor Relations Board, pursuant to Section 10 (b) of the Act and Article II, Section 2 of the Board's Rules and Regulations (R. 6–11). The charge alleged that the respondent had engaged in and was continuing to engage in certain unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the Act (R. 6–7). The charge was filed by the Beaver Valley Lodge No. 200, Amalgamated Association of Iron, Steel, and Tin Workers of North America, a labor organization (R. 31, 142–143, Bd. Exh. 48).

Thereupon, pursuant to Section 10 (b) of the Act and Article II, Section 5 of the Regulations, the Board, through its Regional Director for the Sixth Region, issued a complaint and notice of hearing, which were served on respondent (R.

12–16). The complaint alleged that respondent had engaged in and was engaging in unfair labor practices set forth in subsections (1) and (3) of Section 8, in that respondent was interfering with, coercing and restraining its employees in their self-organization and free choice of representatives for purposes of collective bargaining or other mutual aid or protection, and had discharged or demoted employees because they had joined the above-named labor organization in order to discourage membership therein. The complaint alleged further that these were unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act.

On February 26, 1936, respondent filed a special appearance and answer, admitting the discharges and demotions, but averring that they were made because of inefficiency and violation of respondent's rules. Respondent also asserted that the Act was unconstitutional upon several grounds and that its activities were intrastate and not subject to regulation by Congress or the Board (R. 982–987).

The hearings on the complaint were held before the Board on March 2 and 3, and April 2, 3, 6, 7, and 8, 1936. Following the introduction of evidence on the nature of respondent's business, respondent moved to dismiss the proceeding for lack of jurisdiction (R. 129). The motion was denied (R. 129), whereupon respondent withdrew from further participation in the hearings (R. 130).

On April 9, 1936, the Board handed down its decision setting forth its findings of fact (R. 23–43) and entered the order here involved (R. 44–45). These findings of fact may be summarized as follows:

1. *The nature of respondent's business.*—Respondent is a Pennsylvania corporation which, together with its 19 subsidiaries, transports, manufactures, sells and distributes a diversified line of steel, pig iron, and other materials (R. 23–26; Bd. Exh. 4). It is the fourth largest producer of steel in the United States, employing over 22,000 persons. About 10,000 persons are employed at the respondent's plant at Aliquippa, Pennsylvania (R. 23–24; 88, 109, Bd. Exhs. 4, 5).

Like all large units of the steel industry, respondent is completely integrated. It owns and operates ore, coal, and limestone properties, and transports the ore and coal to its works by its own lake steamships, tugboats and barges. Respondent owns and operates two terminal railroads, one at the Aliquippa plant and another at the Pittsburgh plant, over which it receives and distributes materials and products. Each system of tracks is connected directly with all parts of the mills and yards which it serves, as well as with an important interstate trunk line. Cars are loaded and unloaded by respondent's employees with the help of respondent's cranes and loading equipment. Respondent alone makes 97 per cent of the shipments from Aliquippa over the Pittsburgh & Lake Erie

Railroad, a part of the New York Central System (R. 24–25; 99–102, 133, Bd. Exhs. 4, 5).

Many of respondent's employees are engaged in the distribution of its products in interstate commerce. Much of the steel and pig iron is shipped from Aliquippa to respondent's warehouses in New Orleans, Chicago, Detroit, Pittsburgh, Cincinnati and Memphis, the shipments to the last two cities named being by respondent's own barges and transportation equipment. In Long Island City, New York, and New Orleans, Louisiana, respondent operates structural steel fabricating shops in connection with the warehousing of semifinished materials sent there from Pittsburgh and Aliquippa. Sales offices are maintained in 20 cities of the United States, and there is a wholly-owned subsidiary devoted exclusively to the distribution of respondent's product in Canada. Enormous movements and transactions in interstate commerce are constantly carried on by respondent. In all, 80 per cent by value of the material received at the Aliquippa works originates outside the State of Pennsylvania, and 75 per cent of the product of that plant is sold and shipped in interstate commerce. (R. 25–27; 88, 112, 132, Bd. Exhs. 4, 7.) Most of the production at the Aliquippa plant is according to special order (R. 30; 86–87). An elaboration of the facts as to the character and extent of respondent's business is set forth in connection with the argument, *infra*, pp. 51–61.

2. *The Unfair Labor Practices.*—Beaver Valley Lodge No. 200 of the Amalgamated Association of Iron, Steel, and Tin Workers was chartered on August 4, 1934 (R. 31–32; 73, Bd. Exh. 48). Thereafter the union sought to organize the men in the Aliquippa Works. Respondent countered by systematic coercive efforts to prevent such organization. Officers and organizers of the union were followed about by respondent's police; some of the more important union officers were permanently shadowed and followed even into neighboring towns; a house in which a union meeting had been held was surrounded by respondent's private police, and respondent's employment agent sat near its door noting who entered; some persons coming out of the house were questioned and even beaten (R. 31–32, 34–36; 135–136, 144–145, 167–169, 179, 254–256, 303, 334–335, 339).

Respondent also resisted organization by vilification of the union and its leaders (R. 36–40; 180–181, 208, 224, 250, 337). Employees were told that respondent would not "stand for" the union, and that employees should leave it alone; that they should not attend the meetings or join (R. 35–40; 160, 179, 293, 303). One employee was told that if he continued his union affiliation the company could not tolerate his failure to pay back rents and would evict him, and that the local merchants would not extend credit to him (R. 40; 208–209).

In June 1933 respondent installed at its Aliquippa plant a so-called Plan of Employees' Rep-

resentation, providing for election of officers, meetings, and settlement of grievances. The adoption of the plan was not put up to respondent's employees; they were invited simply to elect employee representatives. (R. 33; 160–162.)

The 12 employees concerned in this case were dismissed during the period from July 1935 to January 1936. The Board found that the discharges of 10 of these men were the result of union activity and were intended by respondent to discourage membership in the union (R. 41).[1] All of them were active leaders in the union; several were officers, and others were leaders of particular groups (R. 42). In most cases slight reasons were assigned for the discharges—reasons which respondent normally had not considered sufficient for such action. Each discharge followed hurriedly upon discovery of some possible pretext (R. 42).[2] The employees discharged were engaged in various duties about the plant, such as operating cranes or nail machines, inspecting motors, driving tractors, and the like (R. 33–42).

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[1] The complaint was dismissed as to two of the men, no evidence concerning them having been presented (R. 42, 45).

[2] Record references to the most pertinent evidence on the unfair labor practices with respect to each employee are as follows: Gerstner, R. 143–144, 150–153; Phillips, R. 166–168, 170–171, 173–174, 154–155; Razzano, R. 177–183, 190; Volpe, R. 326–333, 323–324; Boyer, R. 284, 285–292, 295; Bozich, R. 275, 278–280; Dunn, R. 226–232; Maroll, R. 302, 307–311; Brandy, R. 247, 249–250, 258–262, 266; Cox, R. 208–208, 212.

Upon the basis of these findings, the Board concluded that respondent discharged the ten employees because of their union activity and thereby interfered with the rights of its employees guaranteed by Section 7 of the Act; discriminated in regard to hire and tenure of employment of said ten employees; and discouraged membership in the union; all of which constituted unfair labor practices within the meaning of subdivisions (1) and (3) of Section 8 of the Act (R. 43). By reason of the nature of respondent's operations and the nature of labor disputes in the industry, the Board also concluded that respondent's activities were unfair labor practices affecting commerce within the meaning of subdivisions (6) and (7) of Section 2 of the Act, in that they tended to lead to labor disputes burdening and obstructing commerce and the free flow thereof (R. 44).

The Board therefore issued an order (R. 44–45) requiring respondent to cease and desist from interfering with, restraining or coercing its employees in the exercise of their rights to self-organization and otherwise, as guaranteed in Section 7 of the Act, and from discouraging membership in the union or any other labor organization by discrimination in regard to hire or tenure of employment or any term or condition of employment; to reinstate with back pay the 10 men discharged in the commission of the unfair labor practices; and to post appropriate notices (R. 44–45).

On April 11, 1936, the Board filed in the court below its petition for the enforcement of its order (R. 972–974), and on May 9, 1936, filed an amendment thereto (R. 45a–45b). On June 15, 1936, the court entered its decree denying the petition (R. 977). A petition for rehearing was denied on July 15, 1936 (R. 980).

SUMMARY OF ARGUMENT

The National Labor Relations Act is an exercise of the power of Congress to protect interstate commerce from injuries caused by industrial strife.

Before this statute was enacted experience had shown that industrial strife was a recurrent burden upon the interstate commerce of the nation. Not only in its totality had such strife produced obstructions to commerce, but also in many individual instances such strife eventuated in conspiracies to restrain commerce or imposed such substantial burdens upon it that penalties or injunctions were applied under the Sherman Act. These facts are clearly shown by a survey of the results of individual disputes, the statistics with regard to the total number of such disputes, and repeated Federal activities in connection with industrial strife.

Congress, in dealing with this evil of industrial strife, might have approached the problem in either of two ways. It might have enacted a statute designed to remove the burden on interstate commerce after it had evidenced itself in a particular

case, as the Sherman Act did; or, it might have enacted a statute to deal with the causes of the burden in anticipation of their probable effect, as the Packers and Stockyards Act did. Congressional power to enact this second type of statute (hereinafter called the preventive power) extends at least as far as the power to enact a statute to control the burden after its appearance (hereinafter called the control power). *Stafford* v. *Wallace,* 258 U. S. 495, 525.

The National Labor Relations Act, which is an exercise of this preventive power, does not attempt to eliminate causes of strife in *all* enterprises. The statute and the mandate addressed to the administrative Board are specifically directed to the elimination of the proscribed practices only when they are found to be "affecting commerce" (Sec. 10 (a)). This phrase "affecting commerce" is defined in Section 2 (7) of the statute as "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." These words are plainly patterned upon language used in decisions of this Court in cases arising under other statutes enacted by Congress under the commerce power. This jurisdictional limitation, viewed in the light of the legislative history elsewhere set forth (see Brief for the Board in No. 365, *The Associated Press* v. *National Labor Relations Board,* p. 114), is manifestly a direction

to the Board to exercise the national power within the limits permitted by the Constitution. In other words, Congress has taken as the ambit of this particular preventive statute the boundaries to which it would be restricted were it exercising to the full its control power under appropriate legislation.

Of course, in eliminating these proscribed practices in situations which are likely to come within the control power of Congress, the application of the Act will upon occasion result in the prohibition of activities which, even if allowed to spend their force, would not result in industrial strife which did in fact come within the Federal control power. But, provided that when the practice was indulged in there was a reasonable likelihood that any industrial strife which resulted would be within the control power, the Board may apply the preventive measure. To hold otherwise would deprive Congress of any preventive power, since no one can predict with absolute accuracy, in advance of the complete development of the effects of a cause, exactly what those effects will be. Compare *Stafford v. Wallace*, 258 U. S. 495; *Chicago Board of Trade v. Olsen*, 262 U. S. 1. This lack of predictability is particularly true of industrial strife. Moreover, in eliminating the cause of an evil within the power of Congress, the Act may on occasion eliminate the cause of purely local evils. Indeed, this is almost inevitable, since a single event has multiple consequences. Yet plainly the existence of a granted Federal power cannot be limited by the collateral

consequences of its exercise. *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288.

The foregoing epitome of the statutory scheme makes it clear that the question of the validity of a specific application of the statute depends upon whether industrial strife resulting from the practices in the particular enterprise under consideration would be of the character which the Federal power could control if it occurred. The question of primary importance therefore is the extent of the Federal power of control. Since the language of this statute does not go beyond the ambit of this power, whatever it may be, the statute is clearly constitutional on its face, and the only issue is whether it has been constitutionally applied.

This Court has never had occasion to define the full extent to which industrial strife in the manufacturing, producing, or processing divisions of an enterprise engaged extensively in interstate commerce may be subjected to the exercise of the control power of Congress. It has, however, held that certain situations in these divisions are clearly within the control power, and has further laid down general principles which furnish standards for the proper appreciation of the full scope of that power.

It is well settled that an industrial dispute in such an enterprise involving an intent to affect commerce is within the control power of Congress. *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344; *Bedford Cut Stone Co.* v. *Stone Cutters' Ass'n*, 274 U. S. 37; *Duplex Printing Co.* v. *Deer-*

ing, 254 U. S. 443; *Loewe* v. *Lawlor*, 208 U. S. 274. Consequently, where the situation in a particular enterprise presents a reasonable likelihood that industrial strife, if it occurred, would involve an intent to affect commerce, the Board can apply the statute to that enterprise.

This Court has also recognized the principle that an industrial dispute having the necessary effect of substantially burdening commerce would be within the control power of Congress. *Industrial Association* v. *United States*, 268 U. S. 64, 81; *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 410–411. Hence, the statute is applicable to an enterprise which is shown by evidence before the Board to be of such a character that strife, if it occurred, would have such a necessary effect. The proper application of the statute to such situations depends, of course, on the precise scope of the "necessary effect" principle. Although the Court has recognized the principle it has not heretofore had occasion to define it. At a later place we present our views on the definition and scope of this principle on which the scope of the jurisdiction of the Board may in a particular case depend.

Lastly, the scope of the control power extends to recurring evils which in their totality constitute a burden on interstate commerce. This Court has stated that such recurrent evils may, after appropriate findings, be subjected by Congress to national supervision and restraint. *Stafford* v. *Wallace*, 258 U. S. 495; *Chicago Board*

of Trade v. *Olsen,* 262 U. S. 1. This principle extends to industrial strife in enterprises which receive a substantial part of their raw material from, or ships a substantial part of their products in, interstate commerce. *United Mine Workers* v. *Coronado Coal Co.,* 259 U. S. 344, 408; *United Leather Workers* v. *Herkert & Meisel Trunk Co.,* 265 U. S. 457, 469; *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548. Here Congress has found, and experience shows, that industrial strife in such enterprises constitutes such a recurring evil. Under this view of the control power the statute may be applied to the individual instances of this recurring burden—that is, to any enterprise which receives a substantial part of its materials from, or ships a substantial part of its products in, interstate commerce, and is dependent upon such commerce for the successful conduct of its business.

We believe that the instant case falls within each of these three situations in which the control power of Congress may be exercised.

The reasonable likelihood of a controversy with the intent to affect commerce might be demonstrated in either of two ways: First, evidence might be presented to the Board that in a particular situation the intent already exists; or second, evidence might be presented to the Board that the situation was comparable to, and of the same general type as, others out of which in the past there had evolved controversies with intent to affect commerce, or

that in the particular situation confronting the Board, such definite intention might reasonably be expected to develop. In the case at bar it is not claimed that there is evidence of the first sort; but there is abundant evidence that the situation is fraught with the risk that after strife developed it would involve the purpose to curtail the movement of goods in commerce. (See particularly pp. 40–42, *infra*.)

As previously stated, the Court has not yet determined the exact scope of the phrase "necessary effect of substantially burdening commerce." It undeniably includes situations in which the participants cannot be charged with a conscious specific desire to interrupt commerce. *United States* v. *Patten*, 226 U. S. 525. The statements of this Court make it clear that the application of this principle may depend upon the magnitude of the effect on commerce. The possible use of such a standard is entirely consistent with *Carter* v. *Carter Coal Co.*, 298 U. S. 238. Three possible definitions of the scope of the "necessary effect" principle may be advanced: (1) a necessary effect on commerce results from industrial strife occurring in an enterprise which lies within a well-defined stream or flow of commerce, or (2) a necessary effect on commerce results from industrial strife which restrains a substantial part of all the commerce in a particular commodity, or (3) a necessary effect on commerce results from industrial strife which restrains the movement of a substantial volume of

goods which would otherwise move in interstate commerce. The instant case falls within all three of these aspects of the principle, but this brief addresses particular attention to the first and second.

Lastly, the control power of Congress extends to individual instances of constantly recurring evils which, in their total effect, constitute a burden on interstate commerce. Such a burden is imposed by recurrent industrial strife in enterprises which receive a substantial part of their materials from, or ship a substantial part of their products in interstate commerce. The statute, therefore, was properly applied in this case, for the facts clearly show that respondent's enterprise is largely dependent upon interstate commerce both for its materials and for the marketing of its products.

Neither *Schechter Corp.* v. *United States,* 295 U. S. 495, nor *Carter* v. *Carter Coal Co.,* 298 U. S. 238, is here applicable. In the *Schechter* case it was urged that wages and hours in local industry bore a relation to interstate commerce by reason of an intricate chain of economic causes and effects. An effect on commerce which occurred in such a manner the Court characterized as indirect. The Act involved in the *Carter* case had as its purpose the "stabilizing" of the bituminous coal industry through regulation of prices and wages. The effect of wage cutting on interstate commerce was held to be indirect on the basis of the *Schechter* case. The collective bargaining provisions of that Act were,

as is clear from the face of the statute and from the opinion of the Court, ancillary to the wage fixing provisions and furnished the means through which regulations with respect to wages having the force of law were to be arrived at. On the other hand, the National Labor Relations Act is designed solely to eliminate the burden on interstate commerce caused by industrial strife. Such strife constitutes an interruption to commerce operating directly without "an efficient intervening agency or condition." Thus it deals with matters closely connected with commerce, does not go beyond what is necessary for the protection of commerce, and does not attempt "a broad regulation of industry within the State."

ARGUMENT

In the brief filed on behalf of the National Labor Relations Board in No. 365, *The Associated Press* v. *National Labor Relations Board,* we have shown that the National Labor Relations Act is a valid exercise of the commerce power of Congress. We have also shown, in that brief, that it may constitutionally be applied to that respondent, and that as there, and here, applied, it does not conflict with the Fifth, Seventh, or First Amendments. Finally, we pointed out in that brief that the provisions of the Act there, and here, before the Court are separable from other provisions (particularly Sections 8 (5) and 9) not there, or here, involved). We respectfully refer the Court, therefore, to that brief for the discussion of those questions. In the

present brief we shall consider only the question whether the Act may validly be applied to this respondent, an integrated enterprise engaged in the manufacture of steel and steel products, and their sale in interstate and foreign commerce.[1]

THE NATIONAL LABOR RELATIONS ACT, AS WERE APPLIED TO THIS RESPONDENT, IS A VALID EXERCISE OF THE POWER OF CONGRESS OVER INTERSTATE COMMERCE

The National Labor Relations Act constitutes an exercise of the power of Congress to protect interstate commerce from the burden and injury caused by industrial strife. As this Court stated in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 570:

> The power to regulate commerce is the power to enact "all appropriate legislation" for its "protection and advancement" (*The Daniel Ball*, 10 Wall. 557, 564); to adopt measures "to promote its growth and insure its safety" (*County of Mobile* v.

[1] On the merits of this case, the Board made detailed findings (R. 33–42) with respect to the unfair labor practices engaged in by respondent (pp. 7–8, *supra*), and concluded that the respondent had discharged 10 employees under circumstances which constituted violations of Section 8, subsections (1) and (3) of the Act. Respondent offered no evidence on this question at the hearing before the Board. The Act provides that the Board's findings as to the facts, if supported by evidence, shall be conclusive (Section 10 (e)). Here the record clearly supports the findings and consequently respondent is not in position to overthrow them. *Florida* v. *United States*, 292 U. S. 1, 12; *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73.

Kimball, 102 U. S. 691, 696, 697); to "foster, protect, control and restrain" (*Second Employers' Liability Cases*, 223 U. S. 1, 47).

For many years before this statute was enacted there had been a recognition of the evil of constant industrial strife and of the magnitude of its effect on the commerce of the nation. During certain periods of readjustment the evil became more pronounced, the controversies more numerous and more apt to spread, through sympathetic action, to other enterprises in the industry or to other industries.

Moreover, not only did the total burden of a multitude of strikes bear heavily upon interstate commerce, but also, in many instances, industrial strife eventuated in conspiracies to affect commerce, or strikes which otherwise so substantially burdened it that in order to protect commerce punitive sanctions authorized by the Sherman Anti-Trust Act were applied.

The statute here involved cannot properly be considered apart from this background of industrial disputes and of previous attempts by the Federal government to meet this problem.[4] For that reason, we set forth at the outset a brief statement of this background. Following that, at pp. 31–86,

[4] The non-legal materials in the present brief were collected by the Division of Economic Research, National Labor Relations Board. David J. Saposs, Chief Economist; George S. Wheeler, Associate Economist; George Brooks, Assistant Economist; Jean M. Paton, Jacob Karro, Louis R. Becker, Elizabeth T. Bliss, Junior Economists.

infra, we will explain the nature of the statute, and the constitutional basis for the application of the provisions of Section 8, subsections (1) and (3) to this respondent.

THE BURDEN AND INJURY TO INTERSTATE COMMERCE RESULTING FROM INDUSTRIAL STRIFE

The paralyzing effect on interstate commerce of industrial disputes in enterprises similar to that of respondent is a matter of common knowledge. A strike or lockout ordinarily means the complete cessation of business. No materials flow in; no finished products flow out. Effects are immediately felt in other enterprises dependent upon the plant where the dispute occurs for their materials or semi-finished parts. Markets are disrupted; no business commitments can be made.

By way of illustration a brief sketch may be given of the steel strike of 1919–1920. That strike started in September 1919 and lasted until January 1920. For many weeks, more than 350,000 men were out.[5] Plants in Pennsylvania, Illinois, Ohio, West Virginia, New York, Colorado, and other States suspended operations.[6]

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[5] U. S. Senate, Hearings before Committee on Education and Labor, *Investigation of Strike in Steel Industries* (66th Cong., 1st Sess.), pp. 370–371, 411.

[6] For general accounts of the strike see R. 616–620 (testimony of John A. Fitch) and R. 927–932 (testimony of David J. Saposs). See also *Monthly Labor Review* (December 1919), pp. 79–94, 369; Senate Report No. 289, 66th Cong., 1st Sess., *Investigating Strikes in Steel Industries.*

The pages of *Iron Age*, the standard business publication of the industry (R. 928), reveal the effect of the dispute upon the iron and steel mill operations and the market. In the issue of September 22, 1919, published three days after the strike began, it was reported that the "general effect" of the strike "was to paralyze the iron and steel market. Not knowing just what they had to face, some mills directed their representatives to cease taking orders, and under no circumstances to promise definite deliveries against contracts or specifications" (R. 929). Cleveland reported a cessation of orders for pig iron (R. 929–930). Likewise in New York, business in pig iron was reported to have "taken a decided slump" (R. 930). Few offers for finished iron and steel "are being given serious consideration by selling agencies. What business has been taken is largely by mills which do not seem to be seriously threatened by strike curtailment of operations" (R. 930). The same issue of *Iron Age* reported that sympathetic strikes of seamen, cooks, and firemen, which would tie up lake iron boats, were threatened (R. 929).

Iron Age for October 2 reveals even more drastic dislocations of commerce. Pittsburgh reported that "everything in the steel trade is subordinate to the strike, and neither producers nor consumers are making any real effort to do business" (R. 930). Business in ferro alloys, structural materials, wire products and scrap were crippled in that city (R. 930–931) and in Chicago

(R. 931–932). The effect of the strike was already being felt in the mining and shipment of iron ore (R. 932).

The strike of 1919 is not, however, an isolated example of a burden on interstate commerce. In the steel industry itself major upheavals similar to that of 1919 have taken place at periodic intervals—1892, 1901, and 1909–1910 (R. 611–624). An industry-wide strike in 1934 was averted only by Federal intervention (R. 623–624). Smaller disputes that are constantly recurring (R. 948–949) must also be taken into account. The present critical situation is a matter of common knowledge.

Nor is this burden upon interstate commerce restricted to industry-wide industrial strife. Without detailed description, it may be pointed out that similar disorganization, obstruction, or even paralysis of interstate commerce may result from industrial disputes limited to particular areas of an industry, as in the case of the Pacific Coast lumber strike of 1934 (R. 944–946, Bd. Exh. 99. *Monthly Labor Review* (September 1935) pp. 656–659), or from an industrial dispute in a particular concern, such as the Chevrolet Motor Company strike of 1935 (R. 937–943. *Monthly Labor Review* (July 1935) pp. 83–84). Similar burdens upon interstate and foreign commerce were continually disclosed in the hearings before the National Labor Relations Board in the administration of the Act. See *First Annual*

Report, National Labor Relations Board (1936) pp. 137 *et seq.*

The picture of disruption of commerce caused by industrial strife could be enlarged indefinitely, and details furnished by studies made of the effects of particular strikes. We do not believe it necessary, however, to expand this material in order to illustrate a point which no one will deny. Likewise, it is unnecessary to give more than a summary statement to show the recurrent and continuous nature of the burden.

Industrial strife is of almost daily occurrence. The table in the Appendix (*infra*, p. 95), which gives the number of industrial disputes during each year from 1916 through June 1936, reveals the enormous total burden. In no year has the number of disputes fallen below 650—about two every day—and in some years the number has risen to over 3,500—ten every day. On the basis of similar statistics the Senate Committee on Education and Labor, in reporting the bill which became the present Act, said (Sen. Rep. No. 573, 74th Cong., 1st Sess., pp. 1–2):

> During the period from 1915 through 1921 there were on the average 3,043 strikes per year, involving the vacating of 1,745,000 jobs and the loss of 50,242,000 working days every 12 months. From 1922 through 1926 the annual average totaled 1,050 strikes, 775,000 strikers, and 17,050,000 working-days lost. From 1927 through 1931 the yearly average for disputes was 763, for em-

> ployees leaving their work 275,000, and for days lost 5,665,000. In 1933 over 812,137 workers were drawn into strikes, and in 1934 the number rose to 1,277,344. In this 2-year period over 32,000,000 working days were lost because of labor controversies.

The table in the Appendix also reveals that during certain periods industrial strife becomes particularly acute. Thus in the four years from 1919 to 1922 there occurred more than 10,000 labor disputes involving more than 8,000,000 employees. (See also R. 920–921). Among those which seriously burdened interstate commerce may be noted the strikes of harbor workers in 1919;[7] the strike of 250,000 railway trainmen in August 1919 (R. 926); the general steel strike of 1919–1920 (*supra* pp. 21–23); the strike of longshoremen in New York in October 1919;[8] the strike of 450,000 bituminous coal miners in November 1919,[9] the marine workers strike in May 1921 (R. 924–925); the general strike in the ladies' garment industry in November 1921;[10] the strike of meat packing employees in December 1921;[11] the New England textile strike which began in January 1922;[12] the widespread strikes in the bituminous and anthra-

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[7] See Perlman and Taft, *History of Labor in the United States*, p. 451.

[8] See *Monthly Labor Review* (December 1919), pp. 95–115.

[9] *Ibid.*, pp. 61–78.

[10] *Id.* (May 1922), p. 183. See also R. 925.

[11] *Ibid.*, p. 183. See also R. 923–924.

[12] *Id.* (May 1923), pp. 13–36. See also R. 925.

cite coal industries in April 1922,[13] the strike in the men's garment industry in New York in June 1922 (R. 925); and the general strike of the railway shopmen beginning in July 1922.[14]

A similar series of major industrial conflicts with equally burdensome effects on interstate commerce occurred in the years 1933 to 1935. Among the strikes of this period which seriously burdened commerce may be noted the maritime workers' strike on the Pacific Coast which began in May 1934 and led to the general strike in San Francisco (R. 946–948); the Minneapolis teamsters' strike in May 1934;[15] the national textile strike in September 1934 (R. 943–944); the strike of enamel workers in Terre Haute, Indiana, in March 1935, which led to a general strike in that city (R. 943–944); the strike in the Chevrolet Motor Company at Toledo, Ohio, in April 1935 (*supra*, p. 23); the Pacific Coast lumber strike in May 1935 (*supra*, p. 23); and the strike of shipbuilding workers in Camden, New Jersey, in May and August 1935.[16] In addition, major disputes threatening to tie up the steel, automobile, and lumber industries during 1934 and 1935 were prevented only by Federal intervention (R. 949).

As we have pointed out above, industrial strife is a burden on commerce not only in its totality, but

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[13] *Id.* (November 1922), pp. 1–22. See also R. 926.
[14] *Id.* (December 1922), p. 1–21. See also R. 926.
[15] *Id.* (July 1934), p. 84. See also R. 948.
[16] *Id.* (November 1935), pp. 1288–1290. See also R. 934.

also because frequently individual instances of such strife eventuate into conspiracies to affect commerce, or into burdens so great in their effect upon commerce as to be within the power of Congress to control under the Sherman Act or other appropriate legislation. That industrial strife often leads to these intentional restraints on interstate commerce is illustrated by the situations which have been before the Federal courts.[17] Moreover, in-

[17] *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295; *Bedford Cut Stone Co.* v. *Stone Cutters' Association*, 274 U. S. 37; *Loewe* v. *Lawler*, 208 U. S. 274; *Duplex Printing Co.* v. *Deering*, 254 U. S. 443. Among the reported cases in the lower federal courts in which injunctions were issued to restrain conduct arising out of industrial disputes in mining and manufacturing industries are the following: *Irving* v. *Neal*, 209 Fed. 471 (S. D. N. Y.); *Boyle* v. *United States*, 259 Fed. 803 (C. C. A. 7th); *Columbus Heating & Ventilating Co.* v. *Pittsburgh Building Trades*, 17 F. (2d) 806 (W. D. Pa.); *Wagner Electric Manufacturing Co.* v. *District Lodge No. 9*, 252 Fed. 597 (E. D. Mo.); *United States* v. *Workingmen's Amalgamated Council*, 54 Fed. 994 (C. C. E. D. La.). The following unreported cases where such injunctions were granted are referred to in Federal Antitrust Laws with Amendments (1930, ed.): *United States* v. *E. J. Ray* (p. 101); *United States* v. *Artery* (p. 134); *United States* v. *Bricklayers', Masons', and Plasterers' International Union* (p. 169); *United States* v. *Journeymen Stone Cutters Association* (p. 200); *United States* v. *Meyers* (p. 208); *United States* v. *Painters District Council No. 14* (p. 210); *United States* v. *Glaziers Local No. 27* (p. 214); *United States* v. *Painters District Council No. 2* (p. 219).

The cases enumerated constitute only a partial list of injunctions which have been issued in situations involving strikes, boycotts and other industrial strife. In both the texts dealing with the labor injunctions and the hearings of

dustrial disturbances with such potentialities are apparently increasing in number and intensity, due both to the increasing size and national character of modern business units and to the increasing growth of labor organization on a national scale. Such instances have arisen in the cases before the National Labor Relations Board. *First Annual Report, National Labor Relations Board* (1936) p. 141.

The magnitude of this burden on interstate commerce has for many years prompted Federal action by both the legislative and executive branches of the government in efforts to bring about industrial peace. Frequently this intervention has taken the drastic form of dispatching troops to the area of dispute (R. 408–412), as in the Pullman strike of 1894 (R. 411–412, 415–418, Bd. Exh. 64) and the steel strike of 1919–1920. At other times commissions of inquiry have been appointed by Congress, the President, or a cabinet officer to in-

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anti-labor injunction bills there is ample testimony to the effect that a vast number of injunctions are issued which never find their way into the reports. See Frankfurter and Greene, *The Labor Injunction* (p. 49). Thus, an inquiry by George Wharton Pepper disclosed that during the Railway Shopmen's Strike of 1922 nearly 300 injunctions were issued in the various federal courts, of which only 12 were reported officially. See Pepper, *Injunctions in Labor Disputes*, 49 A. B. A. Rep. 177 (1924). In 1928 President Green of the American Federation of Labor submitted to a Senate committee a "partial list of injunctions" (including state as well as Federal) totaling 389, a great majority of which were never reported. Hearings before a Subcommittee of the Senate Committee on the Judiciary on S. 1482, 70th Cong., 1st Sess., Feb. 1928, pp. 76–86.

vestigate or attempt an adjustment of the dispute.[18] On numerous occasions the President has made personal efforts to bring about an adjustment (R. 440–441, 451–453, 460, 466–469, 623–624, 949–950).[19] The Conciliation Service of the Department of Labor, established in 1913 (c. 141, 37 Stat. 738; U. S. C., Title 29, Sec. 51), has intervened in some 15,900 industrial disputes involving 16,000,000 employees (R. 434).[20]

Nor has Federal intervention in the past failed to consider or invoke means for the prevention of the burden on commerce resulting from industrial strife through elimination of its basic causes. As early as 1882 the United States Senate adopted a resolution directing its Committee on Education and Labor to undertake a study of labor disputes, to "inquire into the causes thereof and the agencies

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[18] *E. g.*, Commission appointed by the President to investigate the Pullman strike of 1894; U. S. Strike Commission, *Report of the Chicago Strike of June-July 1894* (1894) (R. 416); the investigation by a Senate committee of the steel strike of 1919 (see Sen. Rep. No. 289, 66th Cong., 1st Sess.); the President's Board of Inquiry for the Cotton Textile Industry, appointed to investigate and adjust the general textile strike of 1934 (R. 943–944); and the commission appointed by the Secretary of Labor to adjust the strike in the Goodyear Rubber Company plant in 1935 (R. 714–734).

[19] The frequency of Federal intervention is even more clearly shown by the numerous injunctions issued by the Federal courts. See footnote 17, pp. 27–28, *supra;* R. 405–408; Witte, *The Government in Labor Disputes* (1932), p. 84.

[20] See *Annual Reports of the Secretary of Labor*, 1913–1935.

producing the same, and to report what legislation should be adopted to modify or remove such causes and to provide against their continuance or recurrence." Extensive general inquiries for the purpose of working out a comprehensive scheme for dealing with industrial disputes were later undertaken by four subsequent commissions—the Industrial Commission of 1898, the Anthracite Coal Commission of 1902, the United States Commission on Industrial Relations of 1912, and the President's Industrial Conference of 1919–1920. See Brief for the Board in No. 365, *The Associated Press* v. *National Labor Relations Board*, pp. 60–66.

Moreover, in several fields the Federal government has dealt with industrial strife on a comprehensive, long-range basis. In the railroad industry, after an experience in legislation dating back to 1888, Congress in the Railway Labor Act of 1926, and in the 1934 amendments to that Act, applied the principles which it subsequently incorporated in the National Labor Relations Act. *Id.*, pp. 54–59. In war industries during the World War, the National War Labor Board, under the co-chairmanship of William Howard Taft and Frank P. Walsh, and other special boards appointed by President Wilson, intervened in hundreds of threatened and actual labor disputes throughout the course of the war. *Id.*, pp. 61–64. In the two years immediately preceding passage of the National Labor Relations Act, a rising tide of labor disputes, not unusual in periods of recovery from

depression, led to the establishment, *inter alia,* of the National Labor Board and its successor, the first National Labor Relations Board. *Id.,* pp. 66–68.

THE NATURE OF THE NATIONAL LABOR RELATIONS ACT

Federal legislation designed to eliminate or reduce burdens or obstructions to interstate commerce may take either of two forms. First, Congress might enact a statute designed to mitigate the burdens by dealing directly with each particular obstruction as it arose. The Sherman Anti-Trust Act (Act of July 2, 1890, c. 697, 26 Stat. 209; U. S. C., Title 15, Sec. 1) may be referred to as illustrative of this particular type of legislation. Or, second, Congress might have approached the problem by a statute dealing with the *causes* of this burden in anticipation of their probable effect. A statute of the first type will be referred to hereafter as an exercise by Congress of its "*control*" power and a statute of the second type will be referred to hereafter as an exercise by Congress of its "*preventive*" power. Both types of legislation are, of course, merely different means by which Congress may approach the problem of burdens on interstate commerce.

This power of Congress to enact preventive legislation is illustrated by the historical setting of the Packers and Stockyards Act. Many practices prevalent in the stockyards, and in the meat-packing industry in general, had been seriously burdening interstate commerce in both livestock and meat

products. In *Swift & Co.* v. *United States,* 196 U. S. 375, some of these practices were effectively punished under the Sherman Act. Congress, not content with action against particular individuals or combinations, then passed the Packers and Stockyards Act (Act of August 15, 1921, c. 64, 42 Stat. 159; U. S. C., Title 7, Ch. 9), designed to eliminate the causes of the burdens to interstate commerce. This Court, upholding the Act in *Stafford* v. *Wallace,* 258 U. S. 495, stated (p. 520):

> The language of the law shows that what Congress had in mind primarily was to prevent such conspiracies by supervision of the agencies which would be likely to be employed in it. If Congress could provide for punishment or restraint of such conspiracies after their formation through the Anti-Trust Law as in the *Swift Case,* certainly it may provide regulation to prevent their formation.

Many other examples of the exercise by Congress of this power to *prevent* evils which it could *control* could be cited. For present purposes, it will be sufficient to refer to the Grain Futures Act (Act of September 21, 1922, c. 369, 42 Stat. 998; U. S. C., Title 7, Ch. 1) (see *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1) and the Railway Labor Act (Act of May 20, 1926, c. 347, 44 Stat. 577; U. S. C., Title 45, Ch. 8, as amended) (see *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548). In any event, the exist-

ence of the power cannot be doubted. Moreover, that it may be utilized in the field of industrial disputes has been indicated by the Court not only in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks, supra,* but also in *United Mine Workers* v. *Coronado Coal Co.,* 259 U. S. 344, 408, and *United Leather Workers* v. *Herkert & Meisel Trunk Co.,* 265 U. S. 457, 469.

The National Labor Relations Act is an example of this preventive legislation, based on the admitted power of Congress to control certain types of industrial disputes when they have occurred. The Act does not deal with injuries to interstate commerce after they have occurred, but seeks to prevent their occurrence by the elimination of certain specified practices which Congress has found lead to such disputes.

Although Congress thus clearly has a power to prevent obstructions to commerce, it is equally clear that the preventive measures must bear a reasonable relation to the end sought to be achieved. The exercise of the preventive power must, in other words, bear a reasonable relation to the elimination of evils which could be subjected to the control power of Congress after they occurred. Congress cannot make the existence of an evil of national concern the excuse for regulating a large measure of affairs of purely local concern.

Nor has it done so in this Act. The Act does not attempt to eliminate causes of strikes in *all*

enterprises. The statute, and the mandate addressed to the administrative Board, are specifically directed to the elimination of the practices proscribed by Section 8 only when they are found to be "affecting commerce" (Section 10 (a)). This phrase "affecting commerce" is defined in Section 2 (7) of the statute as "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." These words are plainly patterned upon decisions of this Court in cases arising under other statutes enacted by Congress. This jurisdictional limitation, viewed in the light of the legislative history set forth in the Brief for the Board in No. 365, *The Associated Press* v. *National Labor Relations Board,* at p. 114, is manifestly a direction to the Board to exercise the national power within the limits permitted by the Constitution. In other words, Congress has taken as the ambit of this particular preventive statute the boundaries to which it would be restricted were it exercising to the full its control power. It has not endeavored to exercise its preventive power where it could not have exercised its control power under appropriate legislation.

In examining the nature of the evil to be anticipated before it requires the elimination of the practices the Board thus operates in a manner similar to that followed by Congress itself in other preventive legislation. Just as Congress found

in the stockyards and the packing industry certain evils which burdened interstate commerce, and undertook to prevent them by the Packers and Stockyards Act, and found similar evils on the grain exchanges and undertook to prevent them by the Grain Futures Act, so here the Board determines the existence or the probability of the occurrence of an evil which Congress could control. If it so determines in any particular case, it applies the preventive measures provided in the Act, for clearly such a case is one in which industrial strife would constitute a burden and obstruction to commerce.

This *ad hoc* application of this preventive statute is a milder exercise of the power of Congress than either the Packers and Stockyards Act or the Grain Futures Act. Those statutes apply generally to every person engaged in the industries regulated, while the present one is applied only after specific investigation as to the probable outcome of an industrial dispute in the particular enterprise concerned. Moreover, those statutes prescribe detailed regulation of a meticulous character with the intention of governing many of the details of the businesses. Here Congress seeks merely to eliminate the causes of particular evils, and has made no attempt to construct a plan or pattern for the general conduct of business.

One further characteristic of preventive legislation should be noted. In eliminating certain practices in situations in which the resulting industrial

strife would be likely to come within the control power of Congress, the application of the Act will upon occasion result in the prohibition of activity which, even if allowed to spend its force, would not result in industrial strife which did in fact come within the Federal control power. But, provided that when the practice was indulged in there was a reasonable likelihood that any industrial strife which resulted would be within the control power under appropriate legislation, the Board may apply the preventive measure."[11] To hold otherwise would deprive Congress of any preventive power, since no one can foretell with absolute accuracy what the exact effects of any cause will be. Com-

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[11] It is to be observed that the precise criterion upon which the Board's jurisdiction is based is whether *after* industrial strife had developed in the particular enterprise it would be within the control power of Congress. The issue before the Board is never whether the particular labor practice in question would, if continued, have led to industrial strife. We have shown in the brief for the Board in No. 365, *The Associated Press* v. *National Labor Relations Board*, at pp. 46–69, that experience completely supports the finding of Congress (Section 1) that protection of the right of organization of employees is an effective and reasonable means of preventing industrial strife. That issue, therefore, has been resolved for the Board by the findings of Congress.

The record in the case at bar contains much additional documentary evidence and expert testimony demonstrating the efficacy of the means established by this Act to mitigate or eliminate industrial strife (R. 401–564, 597–798, 800–970; Bd. Exhs. 64–71, 86–89, 91–110). This material is digested and separately published in *Governmental Protection of Labor's Right to Organize*, Bulletin No. 1, Labor Relations Board, Div. Econ. Research (1936).

pare *Texas and New Orleans R. Co.* v. *Brotherhood of Ry. Clerks*, 281 U. S. 548; *Stafford* v. *Wallace*, 258 U. S. 495; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1. This lack of predictability is particularly true of industrial strife.

Moreover, in eliminating the cause of an evil within the power of Congress, the Act may also eliminate the cause of purely local evils. Indeed this is almost inevitable, since a single event has multiple consequences. Yet plainly the existence of a granted Federal power cannot be limited by the collateral consequences of its exercise. *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288.

In principle, the present Act may be compared to a hypothetical statute delegating to an administrative agency the power to fix factors of safety for all bridges whose structural weakness "affects interstate commerce." Such a regulation could constitutionally be applied to every bridge used by

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The record also contains detailed evidence concerning the recurrent nature and causes of industrial strife in the steel industry (R. 608 *et seq.*, 877 *et seq.*; Bd. Exhs. 93, 95). See also H. Rep. No. 2447, 52d Cong., 1st Sess., *Employment of Pinkerton Detectives*, p. xi; Sen. Rep. No. 289, 66th Cong., 1st Sess., *Investigating Strike in Steel Industries*, p. 4. In summary, this history shows that there have been recurrent efforts on the part of the employees in the industry to organize; that since 1892 it has been the established policy of the larger steel companies to oppose such efforts; that as a consequence there has been continuous unrest and recurrent strife; that as long as this situation exists, such unrest and strife is "absolutely inevitable" (R. 632–633).

vehicles travelling in interstate commerce. Certainly it would not be invalidated simply because it would result in the protection of many vehicles engaged only in local commerce.

The foregoing discussion makes it clear that the question of the validity of a specific application of the present Act depends upon whether industrial strife in the particular enterprise under consideration could, if it occurred, be controlled by the Federal Government, under appropriate legislation. The question of primary importance, therefore, is the extent of the Federal power of control. Since the language of this statute does not go beyond the ambit of this power, whatever it may be determined to be, the statute is clearly constitutional on its face. The only issue is whether it has been constitutionally applied.

This Court has never had occasion to define the full extent to which industrial strife in the manufacturing, producing, or processing divisions of an enterprise engaged extensively in interstate commerce may be subjected to the exercise of the control power of Congress.[22] It has, however, held

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[22] In the case at bar, in Nos. 420–421, *National Labor Relations Board* v. *Fruehauf Trailer Co.*, and in Nos. 422–423, *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co., Inc.*, the constitutional question raised is whether the Act may be applied to the manufacturing division of an enterprise engaged in interstate commerce. Of course, as is illustrated by No. 469, *Washington, Virginia and Maryland Coach Co.* v. *National Labor Relations Board*, the Act may also be invoked in connection with an enterprise engaged exclusively in commerce. In this brief it is unnec-

that certain situations are clearly within the control power, and has further laid down certain general principles on the basis of which it is possible to state three situations in which Congress may exercise its power to control burdens and obstructions on interstate commerce. We shall first briefly state these three situations, and shall then consider each one in detail with particular reference to its application to respondent.

(1) It is well settled that an industrial dispute involving an intent to affect interstate commerce is within the control power of Congress.

(2) This Court has also recognized that an industrial dispute having the necessary effect of substantially burdening or obstructing commerce is within the control power of Congress.

(3) This Court has also recognized that the control power of Congress extends to recurring evils which in their totality may constitute a substantial burden on interstate commerce.

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essary to discuss the situation which arises where the enterprise is engaged exclusively in commerce, since that point has already been discussed in the Board's briefs in No. 365, *The Associated Press* v. *National Labor Relations Board*, and is fully supported by *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548. Moreover, the language of Section 2 (7), which, together with Section 10 (a), establishes the jurisdictional limitations of the Board, distinguishes between labor practices which occur "in commerce" (that is, in enterprises such as an interstate transportation system), and labor practices which may be described as "having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce" (that is, in enterprises such as that of respondent).

We submit that in the application of the Act to respondent each of these three situations is presented. Of course, the existence of any one of the three is sufficient to sustain the jurisdiction of the Board.

THE VALIDITY OF THE ACT AS APPLIED TO THE RESPONDENT

(1) *The Power of Congress With Respect to Industrial Strife Involving an Intent to Affect Interstate Commerce*

It is well settled that an industrial dispute involving an intent to restrain commerce is within the control power of Congress, even though arising out of local activity. *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295; *Bedford Cut Stone Co.* v. *Stone Cutters' Association,* 274 U. S. 37; *Duplex Printing Co.* v. *Deering,* 254 U. S. 443; *Loewe* v. *Lawlor,* 208 U. S. 274. Consequently, where the situation in a particular enterprise presents a reasonable likelihood that a dispute, if it occurred, would involve an intent to restrain commerce, then the Board can apply the statute to that enterprise.

The reasonable likelihood of a dispute with the intent to affect commerce might be demonstrated in either of two ways: first, evidence might be presented to the Board that in a particular situation the intent already exists; or second, evidence might be presented to the Board that the situation was comparable to and of the same general type as those situations from which in the past there had

evolved controversies with intent to affect commerce, or that in the particular situation confronting the Board such definite intention might reasonably be expected to develop should the strife occur. In the case at bar is it not claimed that there is evidence of the first sort; but there is abundant evidence that the situation is fraught with the risk that after strife developed it would involve the purpose to curtail the movement of goods in commerce. This evidence is of three different sorts.

In the first place, respondent conducts a highly integrated national enterprise operating in some States mines and quarries which are the source of its materials, in other States steel mills and other manufacturing plants, and in still other States wholesale outlets for the distribution of its products. Moreover, it owns and operates certain transportation facilities operating in interstate commerce. In a far-flung, integrated enterprise of this type, controlled by a single employer, industrial strife in any division of the enterprise is peculiarly apt to involve a purpose to promote collective action among employees in other divisions of the enterprise in order to increase the bargaining power of all of the employees as against the common employer. Such a purpose can ordinarily best be effectuated by deliberately restraining commerce in every part of the enterprise. If the situation evolves into a pattern such as has been described, it would clearly come within the situations presented to this Court in *Loewe* v. *Lawler,*

208 U. S. 274; *Duplex Printing Co.* v. *Deering*, 254 U. S. 443; and *Bedford Cut Stone Co.* v. *Stone Cutters' Association*, 274 U. S. 37. The purpose of the boycotts in those cases was to promote collective action among employees other than those engaged in the boycott, and the local action taken was designed to effectuate an interruption of commerce. Here one of the purposes of industrial strife in any division of the enterprise would be to promote collective action throughout all of the divisions of the enterprise, and such local action as might be taken would be designed to effectuate a similar or more aggravated interruption of commerce.

In the second place, many of respondent's employees are engaged in interstate commerce or interstate transportation. Industrial strife, even if it did not originate with commerce employees, would be reasonably likely to spread to them in order to bring further pressure to bear upon the employer to come to terms with the employees engaged in the production divisions of the enterprise. This pressure could best be effectuated by stopping the movement of commerce into and out of the plant. Compare *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295.

Finally, the major points in the labor policies of respondent are correlated with those of other major steel companies through the Iron and Steel Institute. (Cf. Bd. Exh. 44.) All of those considerations which point to the likelihood of industrial strife with an intent to restrain commerce

where there is a single employer with diversified activities in many States, are present and have even greater force in an industry where all the employers treat themselves as a single employer with respect to their labor policies. In other words, industrial strife in the enterprise of any one employer is, as experience in the steel industry itself shows, likely to spread to other enterprises for the purpose of stopping shipments out of all plants in order to bring pressure to bear upon the industry as a whole.

Thus the evidence in this case warrants the conclusion that there is a reasonable likelihood that industrial strife in respondent's enterprise would, if it occurred, involve an intent to affect commerce. This conclusion is particularly justified in all situations where, as here, there is a probability of strife with respect to employees' basic rights to organize and choose representatives for collective bargaining. Such controversies are notoriously bitter and prolonged because of the fundamental issues at stake, tend to involve sympathetic action by organized employees in the same or related industries, and consequently are most likely to result in intentional interferences with sales or shipments in interstate commerce. Precisely such factors are manifested in the cases under the Sherman Act in which intent was found to exist. Cf. *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295, 297–298; *Bedford Stone Co.* v. *Stone Cutters' Ass'n,* 274 U. S. 37, 59–63 (Brandeis and Holmes, J. J.,

dissenting). Therefore, we submit that the Board was justified in holding that the preventive measures of the National Labor Relations Act should be invoked against respondent in order to anticipate that industrial strife affecting commerce which would have been within the control power of Congress.

(2) The Power of Congress With Respect to Industrial Strife the Necessary Effect of Which is Substantially to Affect Commerce

It is not necessary, however, to support the order of the Board in the present case upon the power of Congress to control industrial strife involving an intent to affect commerce. Alternatively, we submit that industrial strife in respondent's enterprise would be within the control power of Congress because it would necessarily have the effect of substantially burdening commerce.

This Court has recognized that Congress may exercise control over some industrial disputes even where intent cannot be or is not proven. For example, in *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, a case which arose under the Sherman Act, this Court stated (pp. 410–411):

> * * * coal mining is not interstate commerce and obstruction of coal mining, though it may prevent coal from going into interstate commerce, is not a restraint of that commerce unless the obstruction to mining is intended to restrain commerce in it *or* has *necessarily such a direct, material, and substantial effect to restrain it that the*

intent reasonably must be inferred. [Italics supplied.]

This language was expressly approved in *Industrial Association* v. *United States,* 268 U. S. 64. The Court there pointed out that the strike in the first *Coronado* case was held not to constitute a conspiracy to restrain interstate commerce "in the absence of proof of an intention to restrain it *or* proof of *such a direct and substantial effect upon it, that such intention reasonably must be inferred*" (p. 81). [Italics supplied.] Further, the Court said that the Sherman Act was not applicable even if it were conceded that the natural result would be to keep the preponderant part of the output of the mine from being shipped out of the State, because "the effect on interstate commerce was not of such substance that a purpose to restrain interstate commerce might be inferred" (*Ibid.*). See also *United Leather Workers* v. *Herkert & Meisel Trunk Co.,* 265 U. S. 457, 471.

It may be argued that in these cases the Court in referring to such direct and substantial effects upon commerce stated that an *intent* must be inferred. But, this is equivalent to saying that that Act may constitutionally be applied to a situation in which there is no actual specific intent, but only a "necessary effect" on commerce. And it must follow that the power of Congress extends at least as far as the Sherman Act has been enforced—that is, to industrial strife which has only a "necessary effect" on interstate commerce.

Thus, the cases dealing with industrial disputes through the application of the Sherman Act establish the proposition that Congress may, by *ad hoc* action, control industrial strife irrespective of the amount of the reduction of the supply of the commodity involved if an intent to stop interstate shipments be shown (Cf. *Nash* v. *United States*, 229 U. S. 373), and that Congress may also take similar measures irrespective of a showing of specific intent where the reduction in the supply of the commodity is so large that an intent to burden and obstruct interstate commerce may be inferred (Cf. *United States* v. *Patten*, 226 U. S. 525).

The existence of this power of Congress to deal with industrial disputes which have only a "necessary effect" of burdening interstate commerce is borne out by the analogy of other cases under the Sherman Act, in which no specific intention was shown. Thus in *United States* v. *Patten*, 226 U. S. 525, this Court held that a conspiracy to corner cotton on an exchange was within the prohibition of the Sherman Act since "by its necessary operation it would directly and materially impede and burden the due course of trade and commerce among the States", and that it was therefore immaterial that there was "no allegation of a specific intent to restrain such trade or commerce" (p. 543). The same proposition is referred to in *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 243.

Indeed, unless the power of Congress extended to disputes with a necessary effect on commerce, the boundaries of Congressional power under the commerce clause would, in this respect, be measured by the state of mind of the persons whom Congress was attempting to control, and it cannot be supposed that such a startling proposition is sound. See *Schechter Corp* v. *United States,* 295 U. S. 495, 547–548; *United Leather Workers* v. *Herkert & Meisel Trunk Co.,* 265 U. S. 457, 472. The comment of the Court in *Railroad Retirement Board* v. *Alton R. R. Co.,* 295 U. S. 330, is apt here (p. 373): "The meaning of the commerce and due process clauses of the Constitution is not so easily enlarged by the voluntary acts of individuals or corporations."

The opinions of this Court do not clearly define the category of industrial strife with the necessary effect of substantially burdening interstate commerce. The reference in the first *Coronado* and *Industrial Association* cases (pp. 44–45, *supra*) to a "direct, material, and substantial effect" upon commerce indicates that one of the factors to be considered in determining whether industrial strife is of this type is the magnitude of the actual effect upon the interstate commerce in a commodity. Although we do not believe this need be the sole basis of decision, we believe that this might properly be accepted as one of the criteria. Indeed, in *International Organization* v. *Red Jacket*

C. C. & C. Co., 18 F. (2d) 839 (C. C. A. 4th), certiorari denied, 275 U. S. 536, this factor was chiefly relied on. There the contention was made that "a conspiracy to interfere with the operation of coal mines is not a conspiracy to restrain or interfere with interstate commerce." The court pointed out that in the second *Coronado* case (*Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295) this Court had held that evidence that the capacity of plaintiff's mines was substantially more than 5,000 tons per day (as against the capacity of 5,000 tons per week which had been assumed in the first *Coronado* case) made, with other evidence as to intent, a case for the jury as to conspiracy to restrain interstate commerce. The Circuit Court of Appeals then went on to say (p. 845):

> Here it appears that the total production of the mines of complainants is in excess of 40,000,000 tons per year, more than 90 per cent of which is shipped in interstate commerce. Interference with the production of these mines as contemplated by defendants would necessarily interfere with interstate commerce in coal to a substantial degree.

It may be objected that a distinction based upon degree or magnitude is inconsistent with the decision in *Carter* v. *Carter Coal Co.*, 298 U. S. 238. We submit that it is not. In the *Carter* case the question was whether the relationship between wage-cutting and interstate commerce in coal was

direct or indirect."[28] The Court held that the relationship was indirect, since the effect on interstate commerce resulted through "an efficient intervening agency or condition" (pp. 307–308); that is, the effect of diverting the movement of interstate commerce resulted only through a causal chain proceeding from wage-cutting, which led to price-cutting, which in turn led to diversion of interstate shipments. In that situation, the Court made it clear that the extent of the effect was immaterial, even though it might be conceded to be substantial, since it could not be direct. The Court stated (p. 308):

> It is quite true that rules of law are sometimes qualified by considerations of degree, as the government argues. But the matter of degree has no bearing upon the question here, since that question is not—What is the *extent* of the local activity or condition, or the *extent* of the effect produced upon interstate commerce? but—What is the *relation* between the activity or condition and the effect? [Italics in original.]

In other words, where there is an efficient intervening agency or condition between the cause and the effect, "such effect * * * however exten-

[28] The Act before the Court in the *Carter* case also contained provisions with respect to collective bargaining, but as we shall show below (*infra*, pp. 88–90), those provisions were merely ancillary to the wage-fixing provisions, to be used as the means through which wage-fixing was accomplished.

sive it may be, is secondary and indirect. An increase in the greatness of the effect adds to its importance. It does not alter its character" (p. 309). Here, on the other hand, industrial strife with the necessary effect of burdening or obstructing commerce obviously constitutes a physical obstruction to commerce operating "proximately—not mediately, remotely, or collaterally" (p. 307) to produce that effect on interstate commerce. See pp. 21–31, *supra;* pp. 77–84, *infra.* Therefore, the *relation* being direct, the matter of degree or magnitude may become significant. See Cardozo, J., concurring, in *Schechter Corp.* v. *United States,* 295 U. S. 495, 554.

Magnitude of effect upon interstate commerce in a particular commodity need not, however, be the sole criterion upon which the Board is to decide whether industrial strife in any particular enterprise would have the necessary effect of burdening or obstructing interstate commerce. The investigation by the Board may cover the nature of the enterprise, including its size in relation to the industry as a whole, whether it is within a stream or flow of commerce, and the volume of interstate commerce both in raw materials and in finished products; the nature of the industry, including its national or local character, the size of its units, and whether one person or corporation owns or controls widely scattered units; and the likelihood of sympathetic strikes or boycotts by unions or

organizations other than the ones directly concerned.

It is unnecessary and, indeed, impossible to list all of the factors upon which the Board might rely. However, for purposes of simplification, and with no intention of exhausting the possibilities, three possible constructions of "necessary effect" may be suggested: (1) industrial strife has the necessary effect of burdening or obstructing interstate commerce when it occurs in an enterprise lying within a well-defined "stream or flow of commerce";[24] (2) industrial strife is of that type when its effect would be to prevent a substantial proportion of all the commerce in the particular commodity; or (3) industrial strife is of that type when its effect would be to prevent interstate sales or shipments of a substantial volume of goods which would otherwise move in interstate commerce.

We believe that for the purposes of the present case a discussion of the construction of "necessary effect" may be confined to construction (1) or (2), although *a fortiori,* the enterprise is also within construction (3). We turn, then, to a consideration of the nature of respondent, with particular attention to its position in a stream or flow of commerce.

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[24] In defining "affecting commerce" in Section 2 (7) of the Act, Congress including specifically those situations where there was a "flow of commerce."

The nature of respondent's operations

Respondent is the fourth largest company in the steel industry (R. 109; Bd. Exhs. 4, 5). The consolidated assets of respondent and its 19 subsidiaries totaled $181,532,641 as of December 31, 1934 (Bd. Exhs. 8, 18). It is "completely integrated", and is engaged directly in the transportation, production, acquisition, sale, and distribution of materials and products (Bd. Exh. 4). One of its two main plants is located at Aliquippa, Pennsylvania, where normally about 10,000 of respondent's more than 20,000 employees are employed (R. 88, 110; Bd. Exh. 4).

This Aliquippa plant is strategically located with regard to river and railroad transportation facilities. It stretches approximately five miles along the banks of the Ohio River (Bd. Exh. 4) below the juncture of the Monongahela and Allegheny Rivers. Respondent, therefore, has direct access to the cheap water transportation afforded by three great waterways, the Mississippi, Ohio, and Monongahela Rivers (Bd. Exh. 7). The respondent is also thoroughly equipped with trackage, locomotives, freight cars, and other railroad equipment in and around the plant. The tracks extend throughout the plant and into and out of the various buildings. (R. 100; Bd. Exh. 4.) Respondent owns and operates the Aliquippa & Southern Railroad Company (Bd. Exh. 4; R. 99–100)—43.20 miles of standard gauge track—which connects the Aliquippa plant with the Pittsburgh and Lake Erie Railroad, a part of the New York Central Railway

System (Bd. Exhs. 4, 5, 15, 50). About 450 employees are directly employed in railroad work within the plant (Bd. Exhs. 5 and 15; R. 101). The Aliquippa & Southern Railroad has 19 locomotives and 614 freight cars (Bd. Exhs. 5, 15). It reports to the Interstate Commerce Commission as a common carrier (Bd. Exh. 16). Respondent carries a considerable tonnage of its products to the South and Southwest over the Ohio and Mississippi Rivers, owning and operating transportation equipment (Bd. Exh. 4) consisting of steamers and barges (R. 120, 392). The barges are loaded by respondent's employees (R. 394).

It is evident that respondent's transportation facilities and activities are essential to and part of respondent's completely integrated business. Respondent, for the production of steel, is dependent upon three basic materials, iron ore, coke, and limestone (R. 82, 83), and it maintains its own reserves, mines and quarries at various points in the United States from which it obtains these basic materials. Respondent procures its iron ore from its ore reserves in the Lake Superior region, and in connection with one of its iron mines in that region, respondent operates a washing and concentrating plant (R. 98, Bd. Exhs. 4, 5). During the eight-year period ending December 31, 1930, respondent used approximately 3,570,000 gross tons of iron ore annually (Bd. Exh. 5). The iron ore, en route from the reserves in the Lake Superior region to Aliquippa, is first carried to the "upper lake ports"

by industrial railroads doing practically no other business (R. 594). The ore is then loaded on specially constructed lake ore carriers and is carried by way of the Great Lakes to respondent's docks at Ashtabula, Ohio (R. 99, 594; Bd. Exh. 4). In order to avoid interruption in the transportation of its supply of iron ore, the respondent owns and operates four of these ore boats on the Great Lakes (Bd. Exh. 4). Because the lakes are closed to navigation by ice from November to April, and in order to meet anticipated business requirements during that period, some of the ore is stored at respondent's lake docks at Ashtabula, Ohio, but the bulk of the ore used at Aliquippa is shipped from the lakes by rail without storage (R. 84, 85, 99, 107, 122; Bd. Exh. 4).

Respondent obtains its coal from its properties in Pennsylvania (Bd. Exh. 4; R. 84–85) where about 2,250 men are employed (R. 236). The coal is transported down the Monongahela and Ohio Rivers by a fleet of 10 towboats and 165 steel barges owned and operated by the respondent, directly to respondent's plants (R. 85, 89; Bd. Exh. 5). At the Aliquippa plant barges are unloaded by respondent's locomotive cranes (R. 102). The coal which is destined for the respondent's blast furnaces is reduced to coke in respondent's by-product plants (Bd. Exh. 4; R. 86).

Respondent's third main raw material, limestone, is shipped by rail from its properties in West Virginia (R. 85, 107).

Some idea of the huge bulk of the raw materials which flow into the Aliquippa works may be gained from the fact that in a representative month, October 1935, the plant received 6,222 full carloads and 237 less than carload lots of materials, 76.5 percent of which originated outside of the State (R. 133). This average of more than 200 inbound cars per day by railroad is exclusive of the heavy river traffic in coal. Most of these incoming products are used directly without storage (R. 84). About 97 percent of all the business of the Pittsburgh and Lake Erie Railroad at Aliquippa is dependent upon the continued operation of respondent's plant (R. 133).

This great bulk of material which flows regularly in interstate commerce to Aliquippa with the aid of respondent's transportation facilities is unloaded by respondent's own employees and equipment, continues its course through respondent's works over respondent's trackage and equipment, and finally moves on to respondent's customers throughout the world with the aid of respondent's transportation facilities, from one or another of respondent's departments in the form of steel in various stages of fabrication. Respondent's product is sold in both semifinished and finished forms (R. 88). Each of respondent's departments has its own shipping department to handle materials which are forwarded to customers from that department. Employees are engaged in these various shipping departments to see that

orders of customers are carried out and to handle goods which are being placed on cars or barges ready for shipment (R. 102). Respondent produces steel largely in accordance with orders or specifications of customers (R. 86-87).

In the production of steel the blast furnaces are loaded with coke, ore and limestone, in successive layers, and the iron ore is reduced to molten iron. From the blast furnaces the molten pig iron is poured either into the Bessemer converters or the open hearth furnaces (R. 82). It is at this stage that variations in the steel, according to customers' specifications, are first made (R. 86). At the Aliquippa plant very little of the product of the blast furnaces is allowed to cool as pigs, but is used in molten state to produce either Bessemer or what is called "open hearth" steel (R. 82). From the open hearth or Bessemer converter the steel is poured into ladles, and from the ladles into molds. When it is cool enough the mold is removed and the ingot is moved into the soaking pit. The soaking pit is an underground furnace where the ingots are brought up to an evenly distributed temperature proper for rolling. From the soaking pit the steel is taken to the blooming mill where it is rolled into rectangular, flat pieces of steel, called "slabs" or square pieces called "blooms". The slabs go to the shear and are shipped outside of the plant to the respondent's South Side Works (R. 83). The blooms are reduced to billets, or sheet bar or skelp and are either sent to the various depart-

ments for further fabrication or shipped to customers outside the plant (R. 83). About 30 per cent of this semifinished steel is sold by respondent at this stage (R. 103).

The operations at the Aliquippa works are "a continuous process" (R. 101). They are based largely upon the use of molten pig, "So that when pig iron is made, it has to be processed as quickly as possible" (R. 118). One operation furnishes the material for the next, and at each step it is necessary to move heavy, bulky materials with a minimum waste of time. The handling of materials as they pass from one department to another is done by rail and by cranes. The cranes "not only control the flow of materials from one department to the next, but if that material was sold at one given point the crane men would load it into a railroad car at that point" (R. 101). In the seamless-tube department there are, for example, 22 cranes and 52 crane men (R. 202).

Rapid handling of materials and expeditious shipment of the product at whatever stage it is sold is made necessary because respondent works largely to customers' specifications and orders. On the average, customers' orders can be filled within one week (R. 118). Customers are dependent upon and expect uninterrupted operation of respondent's Aliquippa plant (R. 104). Respondent employs trace clerks to handle requests that come in from customers for assistance in effecting prompt deliveries (R. 116–117, 128). The trace clerks fol-

low up the movement of steel in shipment until it is delivered at the customer's place of business (R. 128). Respondent also occasionally traces late incoming shipments in order to expedite them (R. 128).

Respondent states that "100 industries look to J. & L. for steel" (Bd. Exh. 21), and that its metallurgists "are customer men in a double sense. They exercise strict control of quality in the metal for your protection, and they are also available for consultation on any steel problem you may have" (Bd. Exh. 20). A part of respondent's product is shipped by railroad to its customers; for this purpose the Pittsburgh & Lake Erie Railroad furnishes an average of 1,900 cars each month or more than 60 cars per day (R. 112). This constitutes about 97 per cent of all the business of the railroad at Aliquippa (R. 133). As previously described, respondent also ships a considerable tonnage of its products down the Ohio and Mississippi rivers with its own transportation equipment.

In order to facilitate the distribution of its products "the corporation has large steel warehouses located at strategic points over the country through which it markets a substantial tonnage of its products" (Bd. Exh. 4). These warehouses are in part located in large cities along the Ohio and Mississippi rivers where they can be reached by the respondent's own barges. In addition, the respondent has warehouses in Chicago, Detroit, and Long Island City, N. Y. (Bd. Exh. 7). From the ware-

houses the steel products are transshipped by rail to customers (R. 107).

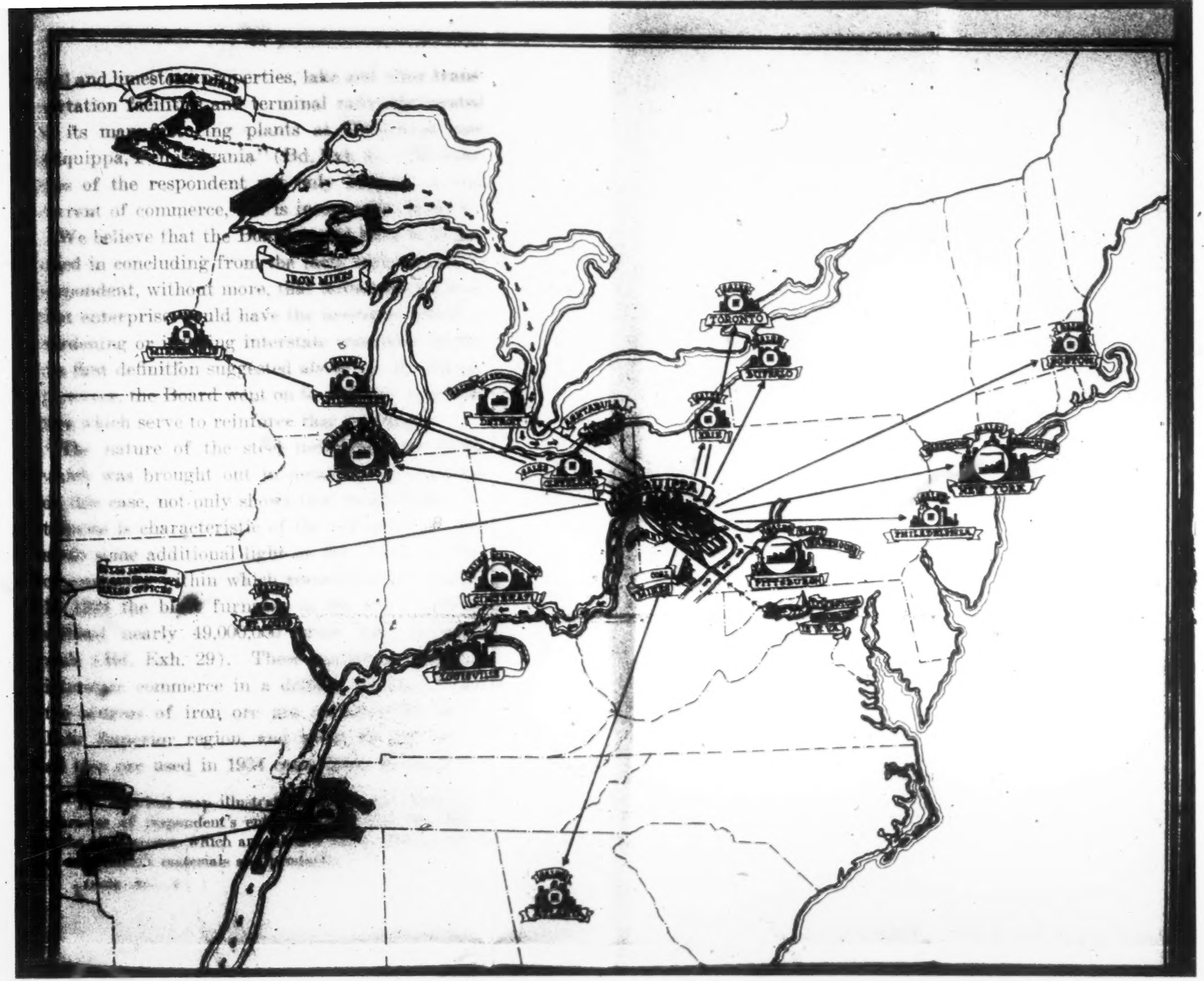
In connection with two of these warehouse points the respondent operates structural steel fabricating shops. Here the semifinished steel is further adapted to customer specifications (Bd. Exh. 5). Through one of its subsidiaries, the Louisiana Erecting Co., respondent "conducts a general erecting business, using principally materials fabricated by the [respondent] at its New Orleans Warehouse" (Bd. Exh. 5). It thus appears that the stage of "manufacture" is not completed at Aliquippa, but rather that the operations there constitute steps in the series of integrated activities involved in producing and distributing steel.

According to the respondent its "products are sold to its customers throughout the United States and many foreign countries, principally through its own sales offices located in twenty of the larger cities of the country. Its sales in Canada are marketed through its subsidiary the Jones and Laughlin Steel Products Company with its offices in Pittsburgh and Toronto, Canada" (Bd. Exh. 4). In common with the other large steel corporations, the respondent sells its product only upon the basis of delivered price (Bd. Exhs. 40, 41).

From this record it is evident that the Jones & Laughlin Steel Corporation is a nationwide enterprise. It regularly draws its materials in well defined paths of commerce from its properties in various States to its works at Ali-

quippa. At the Aliquippa plant the bulk of these materials pass first into the blast furnaces and from there to the converters or open hearth furnaces. From this point on the stream differentiates and moves into and from the various departments according to consumer orders. In any event, both technological necessity and customer interest make the movement of materials and fabrication of products a continuous process. The respondent markets these products in interstate commerce through its own organization and performs, or retains control of, the transportation of the products to the point of consumption. A considerable proportion of respondent's employees are directly engaged in this work of transporting materials to the plant, moving materials within the works, preparing shipments and loading them according to customer specifications, and finally in warehousing and transporting products to customers in respondent's equipment. The extensive ownership by the respondent of the means of transporting this flow of goods to and from its Aliquippa plant is itself conclusive evidence of a regular and definite stream of commerce. Otherwise such private ownership of transportation equipment would not be feasible.

With this background of fact we can fully appreciate the statement of respondent to the Securities and Exchange Commission that it is "completely integrated, owning and operating ore,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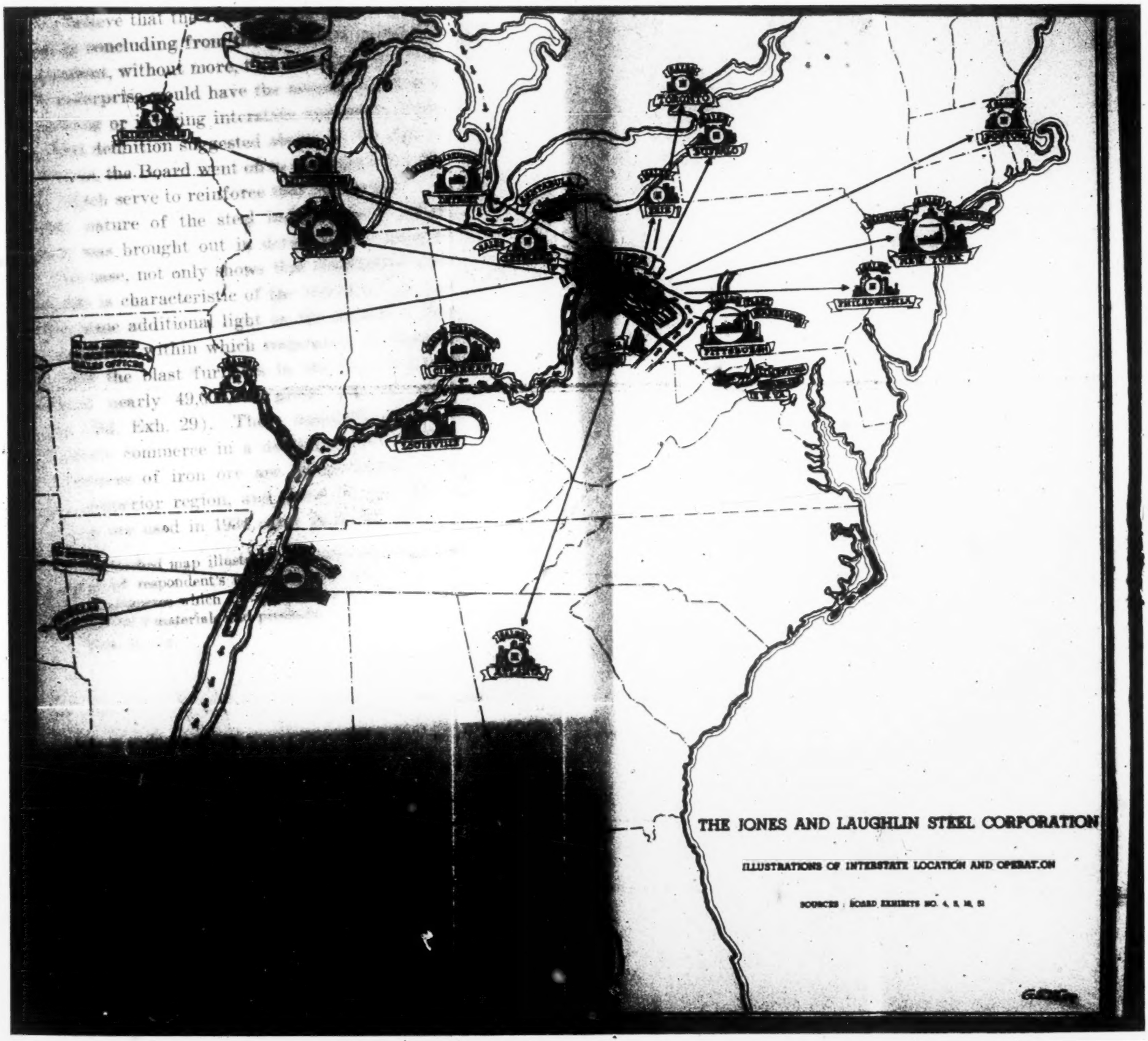
TORONTO
BUFFALO
NEW YORK
PHILADELPHIA
LOUISVILLE
THE JONES AND LAUGHLIN STEEL CORPORATION
ILLUSTRATIONS OF INTERSTATE LOCATION AND OPERATION
SOURCES: BOARD EXHIBITS NO. 4, 8, 10, 21

coal and limestone properties, lake and river transportation facilities and terminal railroads located at its manufacturing plants at Pittsburgh and Aliquippa, Pennsylvania" (Bd. Exh. 4). The business of the respondent not only initiates a vast current of commerce, but is inseparable from it."[25]

We believe that the Board would have been justified in concluding from the facts with respect to respondent, without more, that industrial strife in that enterprise would have the necessary effect of burdening or injuring interstate commerce within the first definition suggested above (p. 51, *supra*). However, the Board went on to consider other factors which serve to reinforce that conclusion.

The nature of the steel industry as a whole, which was brought out in detail in the hearings on this case, not only shows that respondent's enterprise is characteristic of the industry, but also sheds some additional light on the stream or flow of commerce within which respondent is situated. In 1934 the blast furnaces in the steel industry utilized nearly 49,000,000 gross tons of materials (Bd. Exh. 29). These materials moved in interstate commerce in a definite pattern. Thus the sources of iron ore are concentrated in the Lake Superior region, and about 85 per cent of all iron ore used in 1934 came from the mines of

[25] The attached map illustrates not only the nation-wide character of respondent's enterprise, but also the definite paths of commerce which are marked out by the movements of respondent's materials and products.

two States, Minnesota and Michigan (R. 572; Bd. Exh. 75). The large steel companies which use this ore own and operate ore mines, special lake carriers,[35] and the ore loading and unloading equipment at the docks (R. 575). Similarly, all of the important steel producing States, with the exception of Pennsylvania and Alabama, are dependent upon other States for their supply of coking coal, and even Pennsylvania, with its large coal deposits, imported one-fifth of its coking coal from other States (Bd. Exh. 78). Limestone is more widely deposited than suitable ore and coal, but here again there is a large interstate movement to the steel plants, as in the case of the respondent (*supra*, p. 54).

The steel plants to which all these essential materials are carried are, for the most part, concentrated in four States, Illinois, Indiana, Ohio, and Pennsylvania, in the path of commerce which brings the ore from the upper lake region to meet the coking coal from the Pittsburgh area (Bd. Exhs. 74, 78). With few exceptions the plants are at the junction of cheap water and rail transportation facilities either along the Ohio River system or on the southern shores of Lake Michigan and

[35] The integration of this Great Lakes transportation with the steel industry as a whole is affirmed not only by the facts with respect to this respondent (*supra*, p. 54), but also by the Lake carriers themselves. See U. S. Senate, Hearings on S. 2582, *The Merchant Marine Act of 1935*, 74th Cong., 1st Sess., Part 4, pp. 558–560. *Cf.* Act of June 29, 1936, c. 858, 49 Stat. 1985.

Lake Erie (R. 576–577). Over a period of years there has been a considerable movement of steel plant capacity away from the Pittsburgh area to the Lake shores, but, significantly, this movement has not been out of this path of commerce but rather along it in the direction of the ore reserves and steel markets (R. 578; Bd. Exh. 74).

In recent years the steel industry has been characterized by continuous process production and production to customer orders. Blast furnaces are now contiguous to the open hearth furnaces and the rolling mills are placed close to the open hearth furnaces enabling continuous process production to be carried on without periodic stoppages during the process of manufacturing (R. 574–575). After fabrication, the steel is usually shipped directly to some customer to whose specifications it had been shaped from the open hearth stage (R. 86–87; Bd. Exh. 35).[37] The essential continuity of the flow of materials from the steel plants is illustrated by the statement of the President of the United States Steel Corporation that "The production line of the automobile industry now begins back in the steel mills and we are in accord with any effort to keep it running more steadily through the years (R. 586).

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[37] See also *Steel Facts* (American Iron and Steel Institute, April, 1936), p. 6; U. S. Senate, Hearings on S. 4055, *To Prevent Uniform Delivered Price*, 74th Cong., 2nd Sess., p. 270.

The steel industry thus exhibits (1) an enormous and regular movement of materials in interstate commerce from the mines and quarries to the focal point of blast furnace and steel mills concentrated in four States, (2) a continuous processing according to customer specifications in the mills, and (3) shipment without storage of semi-finished and finished products to all parts of the nation and to foreign countries. If not the largest, at least this is one of the largest important patterns of interstate commerce in the industrial world.

A factor which renders this pattern of commerce peculiarly susceptible to disruption by labor disputes is that control is concentrated in large and completely integrated units. In 1934 two corporations, United States Steel and Bethlehem Steel, accounted for more than 51 per cent of the industry's ingot capacity. Less than a dozen corporations control more than 80 per cent of the capacity of the industry (R. 593–594, Bd. Exh. 84). This tendency toward large units and the merger of corporate control is not accidental, but arises from the nature of the industry and its integration of the successive stages of production, receipt and distribution of raw materials and finished products (R. 574–575; Bd. Exhs. 73, 84).

This practical limitation on the number of units in the industry necessarily gives greater significance to industrial disputes therein. Labor disputes in an industry consisting of small, autonomous, competing units, may be met by a diversion

of production and commerce from one unit to another. When, however, an industry is characterized by a few corporations and each controls a large part of a vital pattern of commerce, disruption of any one of these units necessarily burdens a substantial movement of interstate commerce. If, in addition, the employers' association of the industry speaks for the industry on important matters of labor policy, as the Iron and Steel Institute does (Bd. Exh. 44), unfair labor practices may well precipitate industry-wide strife which would disrupt the commerce of the entire industry and of industries dependent upon it. See *supra*, pp. 21–23.

We submit that in the light of these facts, industrial strife in respondent's Aliquippa plant would have the necessary effect of burdening and obstructing interstate commerce even if the limits of the "necessary effect" principle be narrowed as suggested in the first definition suggested above (p. 51, *supra*), *i. e.*, industrial strife which occurs in a well-defined stream or flow of commerce. And surely this very limited definition of "necessary effect of burdening or obstructing interstate commerce" is not too broad.

In enterprises within a well-defined stream there is an ever-present likelihood that any industrial dispute will choke off the stream completely, or at least seriously decrease its volume or force it into different and more burdensome channels. In such

enterprises, at least, the Court has already sanctioned the application of preventive legislation, even where the activities and practices burdened commerce only through the operation of indirect price relationships. *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1. See also *Stafford* v. *Wallace,* 258 U. S. 495; *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420. *A fortiori,* such preventive legislation may properly be applied to these enterprises where its purpose is to prevent the direct physical obstruction to the stream of commerce caused by industrial strife.

Respondent is engaged in a highly integrated interstate enterprise involving ownership of sources of supply, interstate transportation facilities, manufacturing plants, and outlets for distribution. This enterprise is dependent upon a great movement of iron ore, coal and limestone along well-defined paths to the steel mills, thence through them, and thence, in the form of steel products, into the consuming centers of the country—a "definite and well understood course of business." *Stafford* v. *Wallace,* 258 U. S. 495, 516. Industrial strife in the focal point of this stream—the Aliquippa plant—would cripple the entire movement of this great stream or flow of commerce.

It may be objected, however, that respondent's enterprise cannot be in a "stream or flow of commerce" because respondent engages in manufacturing, the raw materials being held within the plant for a time and then sent out in the form of

pig iron or steel. The objection is in direct conflict with the decision of this Court in *Stafford* v. *Wallace*, 258 U. S. 495.

The Packers and Stockyards Act, held valid in that case, defines the current of commerce there involved as including purchase or sale of livestock for slaughter within the State and shipments outside the State of the products resulting from such slaughter. Act of August 15, 1921, c. 64, 42 Stat. 159, Sec. 2; U. S. C., Title 7, Sec. 183. And in the *Stafford* case, *supra*, the Court said (p. 514):

> The object to be secured by the act is the free and unburdened flow of live stock from the ranges and farms of the West and the Southwest through the great stockyards and slaughtering centers on the borders of that region, and thence in the form of meat products to the consuming cities of the country in the Middle West and East, or, still as live stock, to the feeding places and fattening farms in the Middle West or East for further preparation for the market.

The Court thus recognized that stoppage for purposes of processing in the packing plant, involving a definite interruption in the physical movement and a very distinct transformation in the nature of the commodity, did not cause a break in the "stream" or "current" of commerce in the constitutional sense. See also *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1.

Moreover, operations in the meat packing plants are as essentially manufacturing as are the opera-

tions at Aliquippa. It is common knowledge that meat packing involves a very extensive transformation in the nature of the commodity; this is fully brought out in the authorities upon which the Court relied in the Stafford case.[28] There, as here, the essential purpose of the processing operation is not merely to facilitate the flow of commerce, but also to halt it and to transform the commodities in question into things considerably different, by manufacturing or processing operations of varying degrees of complexity.[29] Indeed, due to the seasonal character of the supply of raw materials and the stable demand for meat products, with a consequent necessity for much storage, and to the necessary slowness of many of the operations in the meat-packing industry, such as chilling, curing and smoking, the delays or stoppages of the flow of products in that

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[28] *Hearings on Meat Packing Legislation*, 66th Cong., 2d Sess.; *Report on Meat Packing Industry*, Federal Trade Commission (1919).

[29] A recent description of the meat packing industry by one of the leading concerns states: "In many respects the American Meat Industry is like all other industries. It performs the indispensable function of converting raw materials into finished products and then distributing these products to thousands of retail outlets all over the country * * *. In most industries the manufacturer prepares or buys his raw material * * * adds a certain amount of labor and other expenses, and finally assembles his raw materials into a finished product. The meat packer * * * does exactly the opposite. He takes one unit of raw material, a live animal, and converts it into a great many products differing widely in character and marketability." Swift and Company, *Year Book*, 1935, pp. 15–16.

industry are frequently much longer than those in the operations of respondent (R. 118).

In describing the total effect of the flow of livestock and meat products from West to East, though interrupted at the packing plants in the manner described above, this Court said in *Stafford* v. *Wallace*, 258 U. S. 495, 518–519:

> The application of the commerce clause of the Constitution in the *Swift case* was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another which are ever flowing are in their very essence the commerce among the States and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national protection and control.

This language is equally applicable to respondent's vast interstate enterprise already described, and to the steel industry as a whole, involving a great movement of iron ore, coal, and limestone along well-defined paths through the steel mills and thence in the form of steel products to the consuming centers of the country—"a definite and well-understood course of business". 258 U. S. at 516. The relationship of industrial strife at the respondent's Aliquippa plant to respondent's entire interstate enterprise is no less direct than that of local practices in the live-

stock industry at the point where the commodities are halted, become part of the mass of property within the State (*Minnesota* v. *Blasius*, 290 U. S. 1) and go through extensive processing operations.

Nor can it be said that the packers and stockyards illustration is peculiar because of the great public interest involved in the free and unburdened distribution of meat products in interstate commerce, for this alone does not create constitutional power where it does not otherwise exist. If such considerations were relevant, it could readily be demonstrated that uninterrupted commerce in the steel industry, of which respondent's enterprise forms one of the large units, is as important to our national commercial and economic life as is commerce in meat products.

However, even aside from the stream or flow aspect of the respondent's enterprise, we contend that industrial strife in respondent's enterprise would have the necessary effect of burdening and obstructing interstate commerce. If "necessary effect" be defined as suggested in (2), *supra*, p. 51, *i. e.*, industrial strife which has the effect of preventing or disrupting a substantial proportion of all the interstate commerce in a particular commodity, it is clear that respondent is within this second suggested definition.

This definition is supported by the considered statements in *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344; *Industrial Association* v. *United States*, 268 U. S. 64; and *Interna-*

tional Organization v. *Red Jacket C. C. & C. Co.*, 18 F. (2d) 839 (C. C. A. 4th), which are discussed above at pp. 44–48. Moreover, the extent of the actual burden and disruption of interstate commerce from strife in an enterprise such as respondent's, even if its location in a stream of commerce be ignored, shows the realism of such a definition. A strike or lockout in respondent's plant would mean the complete cessation of business, not merely the cessation of production. Materials in the amount of more than 200 freight cars per day would cease coming into the plant; the business of the Pittsburgh & Lake Erie Railroad at Aliquippa would be curtailed 97 percent; the respondent's enormous lake and river traffic in ore, coal and steel products would come to a halt. The functional coherence of the entire enterprise would be destroyed. The dispute might involve a number of plants or even the whole industry. Employees not engaged in production would be apt to become active participants through sympathetic action. Markets would be disrupted. No business commitments could be made. Orders would be curtailed, and if given could not be filled. Movements and trading would stop. The effect upon commerce would be direct, immediate, and substantial.

Therefore, the evidence in this case warrants the conclusion that there is a reasonable likelihood that industrial strife in respondent's enterprise would, if it occurred, have the necessary effect of substantially burdening interstate commerce. Accord-

ingly, we submit, the Board was justified in holding that the preventive measures of the National Labor Relations Act might be invoked against respondent in order to anticipate industrial strife affecting commerce which would be within the control power of Congress.

(3) *The Power of Congress with Respect to Constantly Recurrent Industrial Strife which Is a Burden upon Interstate Commerce*

This Court has on many occasions enunciated the principle that where Congress, after investigation, directs its legislation to the prevention of certain activities, even though usually only of local concern, which recur with such frequency as to constitute an undue burden on commerce, those activities may be subjected to the control power of Congress.

This principle is most forcibly illustrated by the historical setting of the Packers and Stockyards Act. At first, where attempts were made to bring individual practices within the scope of the Sherman Act, the trade practices of dealers and livestock men were held to affect interstate commerce only indirectly. *Hopkins* v. *United States,* 171 U. S. 578; *Anderson* v. *United States,* 171 U. S. 604. Later, however, an injunction under the Sherman Act was sustained where directed against activities of a combination of packers which fixed and manipulated prices and commission rates at

the stockyards and engaged in other practices in interstate rates and transportation proper. *Swift & Co.* v. *United States,* 196 U. S. 375.

Thereafter, in 1921, a preventive statute was passed—the Packers and Stockyards Act (Act of August 15, 1921, c. 64, 42 Stat. 159; U. S. C., Title 7, Ch. 9). That Act regulates the rates of commissions of market agencies and various unfair discriminatory or deceptive practices of such agencies and packers "in commerce" (Section 202). *Stafford* v. *Wallace,* 258 U. S. 495, presented the question of the application of the Act, not to the packers, but to the commission men and dealers in the stockyards. Arguing from the *Hopkins* and *Anderson* cases, *supra,* these dealers and commission men urged that their activities affected interstate commerce only "indirectly", that the Act sought to obliterate the line between the powers of the States and those of Congress, and that if it were sustained, there would be no limit to the scope of the power of Congress under the commerce clause. See 258 U. S. at 503–504. In rejecting these arguments, the Court pointed out that Congress had found, on the basis of long experience and investigation, that the local acts of commission men and dealers "constitute a direct and undue burden" on interstate commerce (*Id.* at 521) which worked an "injurious direct effect" (*Id.* at 525). In conclusion the Court said (pp. 520–521):

> The reasonable fear by Congress that such acts, usually lawful and affecting only intra-

> state commerce when considered alone, will probably and more or less constantly be used in conspiracies against interstate commerce or constitute a direct and undue burden on it, expressed in this remedial legislation, serves the same purpose as the intent charged in the Swift indictment to bring acts of a similar character into the current of interstate commerce for federal restraint. Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it.

The result is illustrated graphically by other cases under the same statute, as compared with the earlier decisions under the Sherman Act. Thus the Packers and Stockyards Act has been applied to the conduct of a boycott by a dealers' exchange association (*United States* v. *American Livestock Association Co.*, 279 U. S. 435) and rates of commission for brokers in the stockyards have been fixed thereunder (*Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420) without regard to intent to affect interstate commerce. Yet the application of the Sherman Act in like circumstances had previously been denied in the *Anderson* and *Hopkins* cases.

The principle that Congress may legislate with respect to recurring practices burdening interstate commerce also finds expression in the legislation

relating to grain exchanges. In *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, the Court sustained the validity of the Grain Futures Act in its application to trading in futures which, as the Court made abundantly clear, was not in itself interstate commerce. Again, as in *Stafford* v. *Wallace, supra,* the Court pointed to the dangers which were reasonably to be expected from speculation in grain futures, and concluded (p. 40):

> By reason and authority, therefore, in determining the validity of this act, we are prevented from questioning the conclusion of Congress that manipulation of the market for futures on the Chicago Board of Trade may, and from time to time does, directly burden and obstruct commerce between the States in grain, and that it recurs and is a constantly possible danger. For this reason, Congress has the power to provide the appropriate means adopted in this act by which this abuse may be restrained and avoided.

In the *Olsen* case, as in *Stafford* v. *Wallace,* the Court relied upon a decision upholding the application of the Sherman Act in the same field. *United States* v. *Patten,* 226 U. S. 525. However, other prior decisions of the Court, such as *Ware & Leland* v. *Mobile County,* 209 U. S. 405; *United States* v. *Patten,* 226 U. S. 525, 544, and *United Mine Workers* v. *Coronado Coal Co.,* 259 U. S. 344, 410, show that in both the Packers and Stockyards Act and the Grain Futures Act Congress

has established and this Court has approved a scope of jurisdiction wider than that required for the purposes of the Sherman Act and more appropriately designed to achieve the Congressional purpose.[20]

Neither the *Stafford* nor the *Olsen* case can be distinguished on the ground that the evil thus aimed at was monopoly, and that Congress does not possess the same power with respect to other evils which constitutes obstructions or injury to interstate commerce. In summarizing the holding of these cases in *United Leather Workers* v. *Herkert & Meisel Trunk Co.*, 265 U. S. 457, the Court said (p. 469):

> What those cases decided was that when Congress found from investigation that more or less constant abusive practices and a course of business, usually only within state police cognizance, threatened to obstruct or unduly to burden the freedom of interstate commerce, it could by law institute supervision of such course of business in order to prevent the abuses having such effect.

The *Stafford* and *Olsen* cases show, therefore, that Congress may legislate with respect to bur-

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[20] To the same effect are the Federal Trade Commission Act (*Federal Trade Commission* v. *R. F. Keppel & Bro.*, 291 U. S. 304, 310; *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427–429, Brandeis, J., dissenting), and various sections of the Clayton Act (*Standard Fashion Co.* v. *Magrane Houston Co.*, 258 U. S. 346, 356; *United Shoe Machinery Corp.* v. *United States*, 258 U. S. 451, 459–460).

dens or obstructions to commerce, even where the burdens develop out of local practices, where those practices and burdens are reasonably found constantly to recur. See also *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548.

It is, of course, obvious that this principle cannot be applied to all recurrent activity which is of only local concern. Such an application of the principle would undoubtedly conflict with our dual system of government. Hence it is necessary to establish that the injurious activities, considered individually, have a close and substantial relation to commerce.

At the outset, it is to be noted that the fact that the injury actually arises from local activities is of no moment. This was true in the *Stafford* and *Olsen* cases, and in *Texas & New Orleans Ry. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548. And it is well established as a general principle that Congress may remove burdens and obstructions to interstate commerce whatever the source of those injuries may be. *Schechter Corp.* v. *United States,* 295 U. S. 495, 544; *United States* v. *Ferger,* 250 U. S. 199.

For the purposes of the present case it is unnecessary to decide how close this relationship between commerce and the individual activity must be, for it is abundantly clear that industrial strife in what may be called an interstate enterprise—that is, an enterprise which receives a substantial

part of its raw materials from, and disposes of a substantial part of its finished products in, interstate commerce—bears a close relationship to interstate commerce. Industrial strife in such enterprises bears this relation to interstate commerce because it effectuates an actual interruption of commerce without "an efficient intervening agency or condition." *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 307–308. It does not, in the words of the *Carter* case, operate "mediately, remotely, or collaterally" (*id.*, p. 307); rather, it actually stops the movement of goods. The decisions of this Court, the observations of impartial observers on the effects of such strife in these enterprises in the past, and the findings of Congress in the present Act are in accord on this conclusion.

This close relationship is demonstrated by the cases in which the Sherman Act has been held applicable to boycotts and strikes called or conducted with an intent to affect interstate commerce. *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295; *Bedford Cut Stone Co.* v. *Stone Cutters' Association*, 274 U. S. 37; *Duplex Printing Co.* v. *Deering*, 254 U. S. 443; *Loewe* v. *Lawler*, 208 U. S. 274. In each of these cases there was a showing that the conspirators employed means "calculated to carry that intent into effect." *Carter* v. *Carter Coal Co.*, *supra*, at p. 304. That "means", in several of the cases, was the cessation of production or other comparable activity, which caused interstate commerce in the commodity produced to cease or be curtailed.

Precisely this same cessation of production, immediately resulting in a cessation or curtailment of interstate commerce, is the consequence of industrial strife in interstate enterprises such as those above described. The impact on interstate commerce is precisely the same as that which existed in those cases. The intent which was present in those cases certainly cannot increase the burden on commerce, nor constitute the only method by which the relationship of injurious activities to that commerce may be accomplished. Indeed, this Court has recognized that fact; in *Stafford* v. *Wallace*, 258 U. S. 495, the opinion points out that the finding of Congress of the recurrent nature of the abuses serves the same purpose as the intent charged in the indictments under the Sherman Act (pp. 520–521):

> The reasonable fear by Congress that such acts, usually lawful and affecting only intrastate commerce when considered alone, will probably and more or less constantly be used in conspiracies against interstate commerce or constitute a direct and undue burden on it, expressed in this remedial legislation, serves the same purpose as the intent charged in the Swift indictment to bring acts of a similar character into the current of interstate commerce for federal restraint. * * *

See also 258 U. S. at 525.

The relationship of industrial strife to interstate commerce is even more clearly illus-

trated by *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548. The decision in that case stands clearly for the proposition that at least as far as the railway industry is concerned, the burden upon interstate commerce arising out of industrial strife is sufficiently direct to constitute a valid basis for the exercise of the power of Congress to deal with recurring practices which affect that commerce. We believe that in that respect no distinction can be drawn between railroads or other agencies of interstate transportation and communication and large interstate enterprises such as that of the respondent in the present case.

In the first place, it is obvious that the validity of the Railway Labor Act does not depend on the fact that the employees with whom it is concerned are engaged in interstate commerce. Actually, many of the employees associated in the Brotherhood of Railway Clerks were engaged in purely local activities. That Act is valid because it prevents practices which are likely to and have been considered by Congress to obstruct interstate commerce. It is wholly immaterial whether these burdens find their source in intrastate or interstate activity. Congress clearly may deal with obstructive practices even though they are purely local in origin. *Stafford* v. *Wallace, supra; Chicago Board of Trade* v. *Olsen, supra; Second Employers' Liability Cases,* 223 U. S. 1, 51; *United States*

v. *Ferger*, 250 U. S. 199; *Schechter Corp.* v. *United States*, 295 U. S. 495, 544.

The *Texas* case can be distinguished, then, only upon a showing that industrial strife on the agencies of transportation can reasonably be expected to be more injurious to interstate commerce than industrial strife in an interstate enterprise. We believe that no such showing can be made. A simple illustration will make the point clear. The Pittsburgh & Lake Erie Railroad derives 97 percent of its shipments to and from Aliquippa from respondent (R. 133). An industrial dispute on that railroad could be dealt with under the commerce power not merely because the employees involved would be employed by an interstate carrier, but because such a dispute would obstruct the shipment of materials and products received and shipped by respondent. Obviously, however, an industrial dispute at respondent's Aliquippa plant would also obstruct the receipt and shipment of respondent's materials and products not only over the Pittsburgh & Lake Erie, but also over every other railroad and every other type of carrier which transports articles to and from respondent's plant. Indeed, it is true that a strike of the employees on the Pittsburgh & Lake Erie might result in only a very slight obstruction to interstate commerce if respondent could arrange to receive its materials and to ship its product by water, motor lines, or other carriers, while a strike among the employees

of Jones & Laughlin at Aliquippa would completely stop all interstate commerce into and out of that plant.

The foregoing cases, we believe, prove conclusively that the relation between industrial strife and interstate commerce is immediate and substantial, and consequently within the principle above described.

This Court, indeed, has already stated that the power to subject recurrent local activities to national supervision and restraint applies to recurrent industrial strife arising out of local activity. In *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, it was said (p. 408):

> Obstruction to coal mining is not a direct obstruction to interstate commerce in coal, although it, of course, may affect it by reducing the amount of coal to be carried in that commerce. We have had occasion to consider the principles governing the validity of congressional restraint of such indirect obstructions to interstate commerce in *Swift & Co.* v. *United States,* 196 U. S. 375; *United States* v. *Patten,* 226 U. S. 525; *United States* v. *Ferger,* 250 U. S. 199; *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.,* 257 U. S. 563; and *Stafford* v. *Wallace,* 258 U. S. 495. It is clear from these cases that if Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain, or burden

> it, it has the power to subject them to national supervision and restraint. Again, it has the power to punish conspiracies in which such practices are part of the plan, to hinder, restrain, or monopolize interstate commerce. But in the latter case the intent to injure, obstruct, or restrain interstate commerce must appear as an obvious consequence of what is to be done, or be shown by direct evidence or other circumstances.[21]

The relationship to interstate commerce of industrial strife recognized in these decisions of the Court may be said to be a matter of common knowledge. The brief survey of the history of industrial strife in this country set forth above (*supra*, pp. 21–31), shows the disastrous consequences to interstate commerce of such strife. The survey also demonstrates the justification for the view of Congress that this is a constantly recurring consequence of industrial strife.

Congress had before it, therefore, when it was considering the National Labor Relations Act, an extensive background upon which to base its legislation, all of which had been brought before its committees during hearings extending over a period of

[21] As the context shows, the obstructions in question were referred to as "indirect" only in the sense that they had first impact upon local activity. The Court here makes clear, and *Stafford* v. *Wallace* holds, that such practices when found to be recurring and likely to obstruct, restrain or burden interstate commerce may be subjected to national supervision and restraint.

two years."[23] Its finding, therefore, of the burden of industrial strife, is peculiarly deserving of weight. Section 1 of the Act states:

> The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce. * * *
>
> * * * * *
>
> Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest * * *.

Viewed in the light of the facts which Congress had before it, this finding cannot be held unreasonable, and should be accepted by the courts. As this Court said in *Borden's Farm Products Co.* v. *Ten Eyck*, 297 U. S. 251, 263: "Judicial inquiry does not concern itself with the accuracy of the legislative finding, but only with the question whether it so lacks any reasonable basis as to be arbitrary."

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[23] Hearings on S. 2926, 73d Cong., 2d Sess., Senate Committee on Education and Labor; Hearing on S. 1958, 74th Cong., 1st Sess., Senate Committee on Education and Labor; Hearings on H. R. 7978 (companion bill to S. 1958) 74th Cong., 1st Sess., House Committee on Labor. See also Sen. Rep. No. 573 and H. Rep. No. 1147, 74th Cong., 1st Sess.

See also *Stafford* v. *Wallace,* 258 U. S. 495, 521; *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, 37–38, 40; *Norman* v. *Baltimore & Ohio R. Co.,* 294 U. S. 240, 313–316.

There can be no doubt that if there exists, as we contend, this control power of Congress over recurrent industrial strife in interstate enterprises, the order of the Board in this case was within its jurisdiction. Respondent's operations have been summarized in the statement (*supra,* pp. 5–6), and are set out in great detail at pp. 51–61, *supra,* but for present purposes it is sufficient to point out that respondent is dependent upon three basic materials, iron ore, coal and limestone (R. 82, 83). Its iron is obtained from iron reserves, which it owns, in States other than Pennsylvania, chiefly in the Lake Superior region (R. 98). The coal, it derives chiefly from Pennsylvania (R. 84–85). The limestone is obtained from its properties in West Virginia (R. 85, 107). In percentages, the record shows that about 80 percent by value of the materials received at the Aliquippa plant originates outside the State of Pennsylvania, and 75 percent of the product of the plant is shipped in interstate commerce.

With respect to the distribution of its iron and steel products, it is obvious that its market is a national one. The record shows that respondent maintains large warehouses at various points throughout the country, from which it markets a "substantial part" of its products (Bd. Exh. 4).

Respondent itself states that its products are sold to its customers throughout the United States and many foreign countries, principally through its own sales offices located in twenty of the larger cities of the country. Its sales in Canada are marketed through its subsidiary the Jones and Laughlin Steel Products Company with its offices in Pittsburgh and Toronto, Canada (Bd. Exh. 4).

We submit, therefore, that industrial strife in respondent's enterprise is of the character which, by its recurrence, comes within the control of Congress. Consequently, the Board was justified in holding that the preventive measures of the National Labor Relations Act might be invoked against respondent in order to anticipate industrial strife affecting commerce which would be within the control power of Congress.

THE *CARTER* AND *SCHECHTER* CASES ARE NOT CONTRARY TO THE CONCLUSION OF THE BOARD IN THE INSTANT CASE

We have already, in dealing with various points in the argument above presented, referred to the decisions in *Carter* v. *Carter Coal Co.*, 298 U. S. 238, and in *Schechter Corp.* v. *United States*, 295 U. S. 495. However, the reliance of the court below on those cases justifies treating them in an extended fashion.

The distinction between this case and the *Schechter* and *Carter* cases goes to a fundamental distinction in the scope and purpose of the respective statutes involved. The statutes in

those two cases regulated basic manufacturing or producing factors—wages and hours—in order to stabilize labor costs throughout a particular industry, or industry generally. Legal justification adduced in support of the regulations was based upon the intricate economic effects of disparate labor costs upon the prices and movement of the product in interstate commerce.

In the *Schechter* case the Government attempted to sustain the validity of the regulation of wages and hours in the business of slaughtering poultry, by showing that wages and hours bore a relation to interstate commerce through a chain of economic causes and effects—the effect upon the price of chickens sold in local commerce which in turn affected the shipment of chickens into New York and other States. Similar effects could be traced to numerous other forms of activity, local in nature, and the regulation of wages and hours under such circumstances could not have been upheld without also imposing regulation of virtually every other factor in the operation of the business which entered into the price of chickens sold in New York trade. The contrast is marked between that statute and the present Act, which does not depend for its validity upon any such chain of economic causes and effects. The practices to which it applies are brought under regulation in order to prevent the immediate injury to interstate commerce which results from industrial strife.

The Bituminous Coal Conservation Act involved in the *Carter* case was enacted for the purpose of "stabilizing" the bituminous coal mining industry through a regulation of prices and wages by means of a coercive tax. All producers of coal in the United States were to be brought into a Code. This Code set up machinery for the fixing of minimum and maximum prices and the machinery for the determination of minimum wages and maximum hours of employment. The prices were to be established by governmental agencies. The wages and hours were to be established by agreement between the producers and representatives of the mine workers and were to have the force of law. Thus, wage agreements negotiated by collective bargaining in any district or districts of more than two-thirds of the annual tonnage and representatives of the majority of the mine workers in district or districts were to be accepted by all operators in such district or districts.

It may be contended, however, that the *Carter* case is directly determintive of the present case because the Act there involved contained a provision for collective bargaining which was among the labor provisions held unconstitutional. However, it is apparent that the scheme outlined above for the determination of wages and hours by means of collective agreements could not operate without some statutory protection for the right of collective bargaining of the mine workers. Thus the collective bargaining provisions, instead of being directly related to avoiding labor disputes interfering with

interstate commerce, were subordinated to the main purpose of stabilization of the industry and were in fact the means through which one of the stabilizing factors—the establishment of uniform wages and hours—was to be effected."

It is further to be noted that the labor provisions of that Act were applicable to every producer of bituminous coal and every employee in the industry within the United States.[34] There was no

[33] This is made clear by the brief for the Government in the *Carter* case. Thus on page 199 of that brief it is stated that "The Bituminous Coal Conservation Act regulates labor relations only because and in so far as they constitute an integral and essential element in the competitive process. Producers deny to their employees the right of collective bargaining and cut wage rates not because of anything having to do with the mining of coal in the sense of the physical removal of the coal from the ground but in order to gain an advantage over others in the sale of coal in commerce. The Act regulates such conduct by producers in order to prevent them from gaining such an advantage in selling coal."

The entire argument of the Government on the labor provisions of the Act is made in accordance with this keynote. The fact that the collective bargaining provisions would have the independent effect of preventing obstructions and stoppages of interstate commerce is stressed (p. 281), but a reading of the entire argument makes it clear that this feature was considered as incidental to the main purpose of stabilization of wages and hours.

[34] In its brief in the *Carter* case the Government argued that the price provisions were limited to sales in or affecting interstate commerce (See p. 146). No attempt was made by the Government to limit the applicability of the labor provisions and they were not considered as limited by any of the four Justices of this Court who thought that the price provisions were limited to sales in or affecting interstate commerce.

machinery for determining the application of the statute to those enterprises in which unfair labor practices tend to lead to disputes burdening or obstructing commerce.

Moreover, it is apparent from the opinion that the Court viewed the collective bargaining provisions of the Coal Act as merely an ancillary part of the plan of the Act to stabilize wage costs and prices. The Court stated that "the primary contemplation of the act is stabilization of the industry through the regulation of labor *and* the regulation of prices." 298 U. S. at 314. The further statement that "the controversies and evils, which it is the object of the act to regulate and minimize, are local controversies and evils affecting local work undertaken to accomplish that local result" (298 U. S. at 308–309) must be considered in the light of this fundamental purpose of the statute. The "controversies and evils" were regulated as part of a scheme for stabilization of wage levels, and since the end was not within Congressional power, all means to that end, including the collective bargaining provisions, were closed.

Finally, it should be noted that the National Labor Relations Act as here applied is concerned with activities which occur under circumstances closely related to a flow of commerce, and which directly affect that flow. In the *Schechter* case the flow of goods had ceased; in the *Carter* case the flow had not yet begun. In both cases the Court was careful to restrict its decision to that state of facts, and to distinguish the facts of cases

such as *Stafford* v. *Wallace* and the case at bar. In the *Schechter* case the Court emphasized (295 U. S. at p. 543):

> So far as the poultry here in question is concerned, the flow in interstate commerce had ceased. The poultry had come to a permanent rest within the State. It was not held, used, or sold by defendants in relation to any further transactions in interstate commerce and was not destined for transportation to other States. Hence, decisions which deal with a stream of interstate commerce—where goods come to rest within a State temporarily and are later to go forward in interstate commerce—and with the regulations of transactions involved in that practical continuity of movement, are not applicable here.

In the *Carter* case the Court in similar fashion stressed that "the case deals with commodities at rest before interstate commerce has begun", and expressly distinguished *Stafford* v. *Wallace* and similar cases as resting "upon the circumstances that the acts in question constituted direct interference with the 'flow' of commerce among the States." The Court concluded (p. 306):

> The restricted field covered by the *Swift* and kindred cases is illustrated by the *Schechter* case, *supra,* p. 543. There the commodity in question, although shipped from another state, had come to rest in the state of its destination, and, as the court pointed out, was no longer in a current or flow of interstate commerce. The *Swift*

> doctrine was rejected as inapposite. In the *Schechter* case the flow had ceased. Here it had not begun. The difference is not one of substance. The applicable principle is the same.

In the case at bar the vast interstate movement in the regular course of business of materials to respondent's plant in Aliquippa, such as coal, ore, and limestone, derived from respondent's own properties and largely carried in interstate commerce by instrumentalities owned and operated by it, has already been described. *Supra,* pp. 51–65. Such materials are destined for final rest only after further movement in interstate commerce beyond the State of Pennsylvania, in the form of iron and steel products.

The argument advanced herein does not carry the implication that the Federal power extends to the fixing of wages on the ground that differences between employers and employees over wages cause industrial strife. Wage regulation might well be thought not reasonably calculated to eliminate the causes of industrial strife, and hence not to bear a reasonable relation to the protection of commerce. Wage fixing would merely transfer the power to determine wages from the private parties to the Government, and differences would still exist over the wages which should be paid in excess of the fixed minimum. True, the number of conflicts might be somewhat reduced, but it seems clear that they would still be numerous. On the other hand protection of the right of employee organization

and collective bargaining has been proved by experience to be calculated to eliminate one of the most serious causes of industrial strife. In the railroad industry, for example, the enactment of parallel legislation has virtually eliminated industrial strife. See Brief for the Board in No. 365, *The Associated Press* v. *National Labor Relations Board,* pp. 56–58. Moreover, this Court has held in the *Texas & New Orleans* case that such legislation is reasonably related to the protection of commerce and does not go beyond what is necessary for that purpose. This statute eliminates entirely the heavy burden on interstate commerce due to industrial strife traceable to the opposition of employer to the recognized right of employees to organize and bargain collectively through representatives of their own choosing. The recognition and protection of that right provide the open door to the reasonable and just settlement of differences with respect to grievances, wages, and other conditions of work, thereby also greatly reducing or mitigating industrial strife over the substantive terms of the employment contract.

The Act now before the Court is an exercise of the "adequate authority" of Congress "to maintain the orderly conduct of interstate commerce and to provide for the peaceful settlement of disputes which threaten it." Here Congress has not, as in the case of the Bituminous Coal Act, used "this protective authority as a pretext for the exertion of power to regulate activities and relations within the States which affect interstate commerce

only indirectly" and it does not go "beyond any proper measure of protection of interstate commerce and attempts a broad regulation of industry within the State." Separate opinion of Mr. Chief Justice Hughes in *Carter* v. *Carter Coal Company*, 298 U. S. at pp. 317–319.

CONCLUSION

Wherefore, the judgment of the court below should be reversed, and the cause remanded with instructions to grant the petition of the Board for the enforcement of its order.

Respectfully submitted.

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JANUARY 1937

APPENDIX

Number of labor disputes, employees involved, and man-days of idleness resulting, 1916–1936

Year	Number of disputes	Number of disputes in which number of employees is reported	Number of employees involved in reported disputes	Number of man-days of idleness resulting
1916	3,755	(1)	(1)	(1)
1917	4,438	(1)	(1)	(1)
1918	3,344	(1)	(1)	(1)
1919	3,568	2,665	4,160,348	(1)
1920	3,290	2,226	1,463,054	(1)
1921	2,380	1,785	1,099,247	(1)
1922	1,088	899	1,612,562	(1)
1923	1,553	1,199	756,564	(1)
1924	1,240	808	654,641	(1)
1925	1,298	1,012	428,416	(1)
1926	1,035	783	329,592	(1)
1927	734	734	349,434	37,799,394
1928	629	629	357,145	31,556,947
1929	903	903	330,463	9,975,213
1930	653	653	183,114	2,730,386
1931	894	894	279,389	6,398,183
1932	808	808	342,826	6,462,943
1933	1,695	1,695	812,137	14,818,846
1934	1,856	1,856	1,466,695	19,591,949
1935	2,014	2,014	1,117,213	15,456,337
1936[2]	962	962	362,154	5,687,054

(1) Accurate or comparable data not available.

[2] First 6 months.

Compiled from statistics published by the U. S. Bureau of Labor Statistics in the *Monthly Labor Review* (July 1934), p. 76; (May 1935) p. 1267; (May 1936) pp. 1282, 1300; (June 1936) p. 1569; (July 1936) p. 93; (August 1936) p. 386; (September 1936) p. 633; (October 1936) p. 905. Statistics for 1934–1936 are not strictly comparable to those of previous years. Beginning in November 1934, the Bureau of Labor Statistics introduced more accurate and complete methods in compiling the foregoing labor disputes data. *Monthly Labor Review* (January 1936), p. 1. For other figures and sources, see Senate Report No. 573, pp. 1–2; House Report No. 1147, p. 8, 74th Cong., 1st Sess.

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

NO. 419

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

JONES & LAUGHLIN STEEL CORPORATION

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR JONES & LAUGHLIN STEEL CORPORATION.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

NO. 419

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

JONES & LAUGHLIN STEEL CORPORATION

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR JONES & LAUGHLIN STEEL CORPORATION.

OPINION BELOW.

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit (R. 975-977) is reported in 83 F. 2nd 998. The decision of the petitioner, National Labor Relations Board, appears in the record at pages 23 to 45.

JURISDICTION.

The decree of the United States Circuit Court of Appeals for the Fifth Circuit, dismissing the petition of the National Labor Relations Board, was entered on June 15, 1936, and on July 15, 1936, the petition of the National Labor Relations Board for a rehearing was denied, without written opinion. The petitioner filed its Petition for Writ of Certiorari on September 30, 1936, which was granted on November 9, 1936. This Court's jurisdiction is based upon Section 240 (a) of the Judicial Code, as amended, and Section 10 (e) of the National Labor Relations Act.

STATUTE INVOLVED.

The National Labor Relations Act (Act of July 5, 1935, C. 372, 49 Stat. 449; U. S. C., Sup. I, Title 29, Sec. 151 *et seq.*) is set forth in the appendix to the petitioner's brief in *The Associated Press v. National Labor Relations Board* (No. 365) and its various provisions are summarized at pages 52 to 54, *infra*.

STATEMENT OF THE CASE.

Although the essential facts are not seriously disputed, the version which appears in the petitioner's brief cannot be accepted without question because it neglects important elements in the background, which, if given proper emphasis, will clearly expose the fundamental errors of the petitioner's argument. In approaching the statute which is involved, the petitioner has brushed past the real purpose of the National Labor Relations Act in its effort to convince this Honorable Court that Congress had no legislative object other than the protection of interstate commerce. Similarly, in setting

forth the facts of this case, the petitioner has endeavored to hitch them to the current of commerce by magnifying a simple controversy between an employer and a dozen employees into a national crisis, threatening the very foundations of the movement of commerce. Stripped of the importance which the petitioner seeks to attach to them, the ultimate facts are relatively simple and obvious.

1. The Pleadings.

This proceeding had its origin in an order issued by the petitioner against the respondent, Jones & Laughlin Steel Corporation, pursuant to the National Labor Relations Act. The petitioner is a *quasi* judicial agency constituted under the Act, with authority to hear and determine complaints against employers, arising under Section 8 of the Act.

Some time prior to January 23, 1936, thirteen individuals who had been employed in the respondent's steel plant at Aliquippa, Pennsylvania, complained to the petitioner of alleged discrimination against them by the respondent, because of their affiliations with a labor organization, and on that date the petitioner issued a formal complaint against the Jones & Laughlin Steel Corporation (R. 12) in which it charged that the respondent had engaged in unfair labor practices, in violation of Section 8 (3) of the National Labor Relations Act, by the discharge of twelve of the complaining employees and the demotion of the thirteenth. It was alleged that the respondent had discharged and demoted these individuals, because of their union activities, and by reason of such acts, the respondent was charged with discrimination against a certain labor organization known as the Amalgamated Association of Iron, Steel and Tin Workers of North America, Beaver Falls Lodge

No. 200, of which the individuals were alleged to be members. In order to support the jurisdiction of the petitioner, the complaint set forth that the acts of the respondent constituted unfair labor practices, within the meaning of the National Labor Relations Act, and had burdened and obstructed interstate commerce and the free flow thereof, and had led and tended to lead to labor disputes, burdening and obstructing commerce and the free flow thereof (R. 14, 15). In connection with this complaint, the petitioner issued a notice of hearing, requiring the respondent to appear and answer the charges set forth in the complaint (R. 16).

Upon receipt of the above complaint, the respondent filed with the petitioner a pleading which it designated as a "Special Appearance and Answer" (R. 982 to 986), under which the respondent appeared and answered the complaint, with full reservation of its objections to the jurisdiction of the petitioner.

The respondent, in its answer, denied the averments of the complaint that the respondent was engaged in interstate commerce and denied that its activities constituted "a continuous flow of commerce among the several states," although admitting that a substantial portion of its raw materials and finished products were shipped to and from the respondent's plant in interstate commerce (Para. 2 of Answer). The respondent admitted that it had discharged and demoted the individuals named in the complaint, but denied that it had done so because of their union membership or activities, averring on the contrary that the individuals named had been discharged and demoted because of inefficiency, violation of the Employer's rules, conduct of the delinquent individual which endangered his fellow-workmen, or other causes which made it necessary for the respondent to dismiss the men discharged, and would have necessitated the discharge or dismissal of any other man in the re-

spondent's employ who had been guilty of the same offense or inefficiency (Para. 4 and 5). In addition, the respondent denied that it was guilty of any unfair labor practices within the meaning of the National Labor Relations Act; denied that it had discriminated against the individuals named by reason of their union membership; and denied that it was discouraging membership in the labor organization named in the complaint. Respondent also denied that any of its acts burdened or obstructed interstate commerce or the free flow thereof, or otherwise affected interstate commerce, or constituted unfair labor practices affecting interstate commerce, within the meaning of the National Labor Relations Act (Para. 6, 7, 8 and 9 of Answer, R. 982 to 986).

For an affirmative defense to the complaint of the National Labor Relations Board, the respondent averred that the National Labor Relations Board was without jurisdiction over the respondent or its activities or the subject matter of the complaint, and that the National Labor Relations Act, pursuant to which the Board was acting in the premises, was unconstitutional and void, in so far as it was sought to be applied to the respondent. In this connection, the respondent averred that the complaint was insufficient in law; that the National Labor Relations Act, and particularly the provisions thereof under which the complaint was issued, were void and of no effect in that they violated the Constitution of the United States, and particularly Article V of the amendments thereto; that the National Labor Relations Act was invalid and void in that it denied respondent the right of trial by jury in violation of the Constitution of the United States, and particularly Article VII of the Amendments thereto; that the National Labor Relations Act was invalid and void in that it was contrary to decisions of the Supreme Court of the United States and that the Board in assuming jurisdiction

to hear the complaint was acting unlawfully and in defiance of these decisions and the Constitution of the United States; that the National Labor Relations Act was invalid and void in that it purported to confer judicial power upon the Labor Relations Board in violation of the Constitution of the United States, and particularly Section I and Section II (1) of Article III; that the National Labor Relations Act was invalid and void because it constituted an arbitrary and unreasonable interference with the respondent's freedom of contract; that the transactions described in the complaint were not subject to regulation by the Congress of the United States through the National Labor Relations Act, or otherwise; that the National Labor Relations Board had no jurisdiction over controversies between the respondent and its employees in that such matters did not affect interstate commerce and were, therefore, not subject to the National Labor Relations Act; that the National Labor Relations Board, having taken an active part in the institution of the proceedings, was disqualified from purporting to exercise a judicial function in the premises; and that the National Labor Relations Act, under any construction consistent with the provisions of the Constitution, could have no application to the respondent or its relations with its employees (Para. 10 of the Answer).

After the foregoing special appearance and Answer had been filed, the National Labor Relations Board proceeded to entertain the complaint and to hear evidence on the matters therein set forth. Because of the respondent's objections to the jurisdiction of the Board, the issue of jurisdiction was first heard and evidence was presented by the Board and the respondent concerning the question of the constitutionality of the National Labor Relations Act and its application to the respondent. At the close of that evidence, the respondent, con-

sistent with its special appearance in the hearing, moved to dismiss the complaint on the ground that the facts showed that the National Labor Relations Board had no jurisdiction to hear or determine the matters alleged in the complaint. This motion, having been denied by the Board, the respondent, in accordance with its special appearance, withdrew from active participation in the hearing. Subsequently the Board, after hearings in Pittsburgh and a joint hearing in Washington (involving other companies) rendered its decision and, before the respondent had received notice of the decision, filed a petition for enforcement of its order in the United States Circuit Court of Appeals for the Fifth Circuit. The jurisdiction of the Court was based on the fact that the respondent was qualified to do business in Louisiana.

2. Facts Relating to the Nature of the Respondent's Operations.

The respondent is a Pennsylvania corporation, with its principal office in Pittsburgh, Pennsylvania (Board's Exhibit 3). It is engaged primarily in the business of manufacturing iron and steel in plants situated in the vicinity of Pittsburgh (Board's Exhibit 4). The transactions covered by the complaint of the National Labor Relations Board related solely to the discharge of certain employees, who had been employed by the respondent in its plant at Aliquippa, Pennsylvania (R. 13, 14). *This is the decisive factor in the case.* Although the National Labor Relations Board offered and received evidence relating to a multitude of other activities of the respondent and other employers and employees, *an examination of the complaint will show that the only substantial question involved is the propriety of the discharge and demotion of thirteen employees who were unquestionably engaged in aiding the respondent's man-*

ufacturing activities in the Aliquippa works (R. 33 to 41). Two of the employees were motor inspectors; one was a tractor driver; three were crane operators; one was a washer in the coke plant; and three were laborers (Decision, R. 33 to 40). Three other employees were mentioned in the complaint, but the complaint was withdrawn as to one of them and no evidence was heard or action taken as to the other two.

The respondent's Aliquippa plant is situated in a community of approximately 30,000 persons, which is located about fifteen miles below Pittsburgh on the banks of the Ohio River (R. 341). The plant in question contains complete facilities for the production of finished and semi-finished iron and steel products from raw materials (Board's Exhibit 4). A substantial investment in lands, plants and equipment is involved (Board's Exhibit 4). The Aliquippa works consists primarily of a by-product coke plant for the production of coke; blast furnaces for the production of pig iron; open hearth furnaces and Bessemer converters for the production of steel; blooming mills for the reduction of steel ingots into smaller shapes; and a number of finishing mills, such as structural mills, rod mills, wire mills and the like. In addition there are other buildings, structures and equipment, storage yards, docks, and an intra-plant railroad system. Approximately 10,000 employes are engaged in carrying on the operations at the Aliquippa plant (R. 31).

For the most part, the respondent's operations at the Aliquippa works are carried on in two distinct stages, the first being the conversion of raw materials into pig iron and the second being the manufacture of semi-finished and finished iron and steel products. In both cases, the operations result in substantially changing the character, utility and value of the materials

wrought upon, which is apparent from the nature and extent of the processes to which they are subjected.

In the first state of respondent's operations, the principal raw materials used are iron ore of varying grades and descriptions, coal, limestone and other less important materials (R. 82). The iron ore is procured from mines in Minnesota and Michigan and is transported over the Great Lakes to the lower lake ports (R. 99). A subsidiary of the respondent is engaged in the business of lake transportation and transports approximately 25% of the ore used by the respondent at its various plants, as well as ore belonging to other manufacturers (R. 123). The ore is taken from the docks on the lower lake ports by independent rail carriers and shipped to the respondent's plant at Aliquippa (R. 85), where it is stored in stock piles for future use (R. 84). The amount of ore in storage varies with the season, but there is usually enough ore on hand to maintain operations from nine to ten months (R. 121). Coal is procured from the mines of Vesta Coal Company, a subsidiary of the respondent, situated in Pennsylvania (R. 85), and is transferred by barge from the mine to the respondent's plant at Aliquippa where it, like ore, is stored for future use (R. 121). Approximately two to three months' supply of coal is always on hand (R. 121). Limestone, which is another important raw material, is obtained in Pennsylvania and West Virginia (R. 85), and is shipped, by independent rail carriers (R. 85), to respondent's plant at Aliquippa, where it is stored. The amounts of limestone usually on hand are probably sufficient to operate the blast furnaces for a few weeks (R. 108).

In the first step in respondent's operations, coal is withdrawn from storage, prepared and converted into coke in by-product coke ovens (R. 86). The coke resulting from the operation is not sold but is used in

subsequent operations (R. 86), which is also the case with respect to some of the by-products (R. 86). Other by-products, principally chemicals, are from time to time sold (R. 86), but there is no evidence as to the ultimate disposition of these by-products. The coke is used in the blast furnaces, with ore and limestone to produce pig iron (R. 82). The scrap metal used in the manufacture of steel is obtained from operations and not purchased (R. 90).

The respondent's operations up to this point are not carried on with reference to any preexisting orders or specifications, although, of course, the amount of pig iron produced does reflect the existing and probable future demands of the market (R. 86). Although differing grades of pig iron are produced, there is no endeavor to manufacture according to particular customers' specifications.

The second stage of respondent's operations consists of the conversion of pig iron into steel and the fabrication of finished and semi-finished steel products (R. 86). To a large extent, the second stage is determined by the orders and specifications of customers, although a portion of respondent's products is manufactured for stock (R. 86).

The pig iron is transported from the blast furnaces to a mixer and then, with scrap, ores and various metals, converted into steel in the open hearth furnaces or by the Bessemer process (R. 82). The steel ingots which result from this operation are then placed in soaking pits to obtain an evenly distributed heat and cut down into shapes and sizes suitable for further fabrication in the blooming mill (R. 83). After this operation is completed, the resulting blooms, slabs, billets and bars (which are sizes and shapes produced by the rolling operations of the blooming mill) are either sold or subjected to other manufacturing processes in the various

finishing mills, where pipes, structural shapes, tin plate, rods, wires, tubes and a variety of products are made (R. 82).

The greater portion of the respondent's production of semi-finished steel is used by it in subsequent operations, but some is sold to other manufacturers, principally in the Pittsburgh district (R. 88) within the State of Pennsylvania. Of the finished products, a portion is carried in stock, but the greater percentage is immediately shipped by barge or railroad to customers (R. 87). In some instances finished and semi-finished products are shipped by barge or rail to warehouses in a number of localities and then shipped from there to customers (R. 107). By far the greater portion is handled by rail carriers (R. 87). It is admitted that probably 75% of respondent's finished products is normally transported to states other than the State of Pennsylvania (R. 88).

The respondent does not own or operate any railroads but does control a subsidiary corporation, which operates an intra-plant railroad, at Aliquippa. This railroad receives cars from independent rail carriers and moves them about the respondent's plant (R. 100). It likewise delivers cars containing finished products at the plant to independent carriers for shipment to customers (R. 100, 101). The respondent also owns a number of barges and a subsidiary corporation, Vesta Coal Company, owns and operates tow boats for hauling barges laden with coal, and in some cases with manufactured products (R. 120).

The Board attached great significance to the fact that within the last year the respondent claimed a so-called "transit privilege" which entitles a shipper of unfinished material to stop it in transit for further fabrication and then continue the shipment, under a through tariff (R. 367). It appears that the respondent

has used this privilege to a limited extent for the purpose of transferring rough castings to its Pittsburgh works for further manufacturing operations (R. 381), but there was no evidence as to the point of destination (R. 390, 391).

3. Facts Relating to the Discharges and Demotion of Employees.

As the summary of the pleadings and procedure has indicated (*supra*, pages 3 to 7), the gravamen of the complaint against the respondent was that it had discharged or demoted thirteen production employees at its Aliquippa plant, because of their alleged union activities. In other words, although the petitioner was nominally the plaintiff, as well as the judge, the real parties in interest were the thirteen employees who were represented by the Board. Practically all of the factual evidence in the case (except that which dealt with the nature of the respondent's business) related to the circumstances surrounding the relations of these employees with the respondent. The petitioner has not reviewed this evidence in its brief, because it considers that only questions of law are now before the Court. On the other hand, there is good reason to hold that these facts are most important to a decision on the constitutional issues, because they show how tenuous is the connection between the movement of interstate commerce and the transactions which were probed and determined by the petitioner. More than that, they are striking proof that the provisions of the Act which the Board has sought to impose upon the respondent are a continuing menace to its freedom of operations and contract.

After the evidence as to the nature of the respondent's operations had been received, the respondent, con-

sistently with its special appearance in the case and because of the known hostile attitude of the Board towards employers, and particularly towards those who insisted upon the preservation of their constitutional rights (see *infra*, pages 41 and 42) withdrew from further participation in the hearing and did not offer any evidence on the merits.

The procedure for hearing which the National Labor Relations Act provides does not require the application of the rules of evidence prevailing in courts of law or equity and the petitioner, in this case at least, has accepted this as a license to let down the bars to every conceivable kind of highly prejudicial, irrelevant and irresponsible evidence. Hearsay, rumor, suspicion and unqualified opinion were received in the course of the hearings and given full consideration in the petitioner's decision. The respondent was blamed for the activities of local police authorities (see *e. g.*, R. 139) and of other persons who had no connection with the respondent, except in the biased opinion of hostile witnesses (see *e. g.* 169, 170; 356). Transactions which occurred long before the enactment of the National Labor Relations Act were probed and used against the respondent. It is noteworthy that much of the testimony which dealt with events occurring before the Act was heard by the National Steel Labor Relations Board (R. 141, 212 and 360) under previous legislation (Public Resolution No. 44) and the respondent exonerated by the findings of that authority. Strikes in the steel industry and elsewhere, occurring within the last quarter century, were examined and abuses were brought to light, for which the respondent was in no way responsible, but which nevertheless contributed to its prejudice in the eyes of the petitioner. Injunctions granted by Federal Courts in labor controversies came in for their share of criticism (R. 469, 470) and the Board was outspoken in its

antagonism towards lawyers and courts and their constitutional doctrines.

An employee of the Pennsylvania Department of Labor was allowed to testify as to charges made against the respondent which were found in affidavits filed with the Department *before* the enactment of the Labor Act, as though they were the established truth (R. 597, 607). The witness pointed out that the charges in these affidavits were serious enough to warrant reference to the then existing National Steel Labor Relations Board (R. 607) but failed to mention that the decision of that Board, in a subsequent hearing, was favorable to the respondent.

In short, the only material evidence was that which dealt with the disciplinary action complained of, and even there the petitioner proceeded upon hearsay, rumor and suspicion and the wildest surmise. It assumed the attitude that every discharge was presumptively wrongful, leaving with the employer the burden of justification, so that if the Board considered that the employer had acted too hastily or too severely, or in disregard of seniority, a violation of the Act would be necessarily involved. Considerations of safety, efficiency and discipline were inconsequential if, in the petitioner's opinion, the employer did not have an ironclad case to back up every disciplinary move. A brief review of the individual cases which were heard by the Board will indicate the actual scope of the issues and the petitioner's attitude towards employers.

Martin Gersner, a motor inspector, was discharged because a nut fell off a crane which he was supposed to have inspected (R. 159). He was so little interested in his employment that he did not bother to look for the nut (R. 159). His real excuse for complaining against the action of the respondent is that others who

have been guilty of similar offenses over the past several years received lesser penalties (R. 152, 153).

Harry Phillips, also a motor inspector, left his job to eat his lunch, to visit the wash house and to smoke a cigarette (R. 173). He was called for duty twice and failed to answer (R. 173). Then upon being reprimanded he lied to his foreman by stating that he did not hear the first whistle and explained his failure to respond to the second, by the statement that he was in the wash house (R. 173, 174).

Angelo Razzano, a tractor driver, thought he had to work too hard in the respondent's plant (R. 178). He was laid off a week for scratching a machine (R. 184) and complains that he was given other work when his tractor was idle (R. 185). He was fired for failing to close a door (R. 182), in violation of a rule which was established to protect the men working in the mills from the cold weather outside (R. 190). He says that other people have been remiss and were not discharged.

Ronald Cox, a craneman, was discharged because he started his crane, without testing the limit stops (R. 204). He admits that the limit stops are important because they prevent the crane from rising too high and dropping its load on the working floor (R. 205). His excuse for violating the instruction of his foreman is that he knew better than the foreman what was the proper method of testing the limit stops (R. 205). The learned member of the Board in his question encouraged the violation of the foreman's orders, where the employee thinks that the foreman is in the wrong (R. 205). Cox, in testifying for himself, admitted that he did not take the question of his discharge up with the higher officials and that he refused the assistance of an employee representative (R. 206, 207).

Martin Dunn, a crane operator, complained of discrimination before he was discharged, on the ground

that he got only one or two days' work a week while others received more (R. 234), but when he came to estimate his wages, for purposes of recovery under the Act, he stated that he was getting five days a week before his discharge (R. 235). Some time before his discharge, he claimed he was not getting enough work and his foreman granted a transfer to the labor gang where more work was available (R. 234). The same foreman brought him back to a crane. In June, 1935, he was suspended for ten days as a disciplinary measure (R. 222). He was discharged for leaving the key to the safety lock to his crane on the bench beside the crane (R. 229).

Dominic Brandy, a coal washer, likewise complained that prior to his discharge he did not receive as much work as the other men (R. 251), but when it came to estimating the amount of his recovery under the act, he considered that he had worked five days a week for five months before his layoff (R. 264-265). Again a member of the Board encouraged the witness to vilify the Company (R. 268). He was laid off in August, 1935, because when a sample of his work was taken, it was found that the coal had not been properly washed and that there was an excess of slate present. In November he was discharged because another bad sample was found (R. 259-262).

Eli Bozich was laid off one week in September, 1935, because he left his job before it was finished. His excuse was that others were similarly neglectful (R. 272). Later he received a two weeks' layoff for not reporting to work but says that he was not instructed to appear (R. 273). He was finally discharged for standing idle after he had finished a particular piece of work (R. 280). He says that other workers who loafed on the job have gotten away with it (R. 281).

Royal Boyer, a nail maker, was transferred to the nail department at his own request so that he could earn more money. He was laid off in October for two weeks because he put good nails in a buggy which contained bad nails (R. 291), which he admitted was probably his fault (R. 292). He was discharged subsequently because ten pounds of bad nails were discovered in the buggy which he filled as he worked (R. 285). Although he thinks that someone else put them there, the buggy was by his side and the inspector discovered the bad nails while it was being filled (R. 288). He also says that other workers on occasion made bad nails (R. 290).

George Marrol, a machinist's helper, was put on a hydraulic drill press in December, 1935, and was discharged for bad work. He admits the work was bad but blames the Company for putting him on a press which was difficult to operate (R. 308). He points out that other members of the crew were not put on this press but admits that they too were members of the union (R. 311). His employment record indicates that he was satisfactory from the standpoint of punctuality and other qualifications but was hopeless as to ability (R. 314).

Angelo Volpe was a foreman from 1921 to 1930, when he was demoted because he would not work on Easter Sunday (R. 320). He was transferred from the labor gang to a crane in another mill at his own request so that he could earn more money (R. 320). He was laid off in April, 1935, because he lifted badly loaded pipe, which might have fallen from its sling and injured someone (R. 321, 322). He says that the person who loaded the pipe was at fault (R. 322). He was reprimanded by a state inspector for making the lift on an improper signal from the loader and given a 15-day lay-off (R. 323), but argues that other crane operators

frequently violated the rule (R. 324). He was finally discharged because he lifted a load without a signal and struck a fellow workman (R. 330).

What can be done to preserve efficiency and discipline if the Board is to substitute its unqualified judgment for that of the employer in cases such as these? Must an employee be criminally careless to justify discipline or a discharge? Perhaps some of the faults that led to disciplinary action may seem insufficient to the Board, but how can it usurp the function of deciding a question such as that, especially where other considerations of authority and morale may be involved? Of tangible evidence of union discrimination there was none. Some of the witnesses rely on the fact that the respondent's agents knew of their union affiliations, but how could men working in the same plant, in the same community, help but know it. Others base their charges on expressions from foremen which may have been derogatory to the union, but how may the respondent control the thoughts of five hundred foremen? Some of the witnesses "felt" that they were being treated unfairly, but how could that be of any value to a decision on their cases. The petitioner may have believed that discrimination is not easy to prove and that unreliable guesswork must therefore be substituted for relevant evidence. If that be true, it merely emphasizes the fact that the labor act and the administrative proceedings which it has created for the purpose of sitting in judgment on the employer's right to discipline are living threats to his freedom.

4. Hypothetical Evidence.

There was no proof that the respondent's operations had been interrupted by a strike, or that the efficiency of its operations had been in the slightest respect impaired or hampered by the discharge of the complaining witnesses. Petitioner, however, offered and received in evidence a great variety of documentary and other evidence, including a miscellany of economic and political opinions, none of which seemed to have any actual relevancy to the issues of the case. This hypothetical evidence covered such a wide field and embraced so many subjects that it is almost impossible to give an intelligible abstract of its content. It ranged from magazine articles (see *e. g.* Board's Exhibits 25 to 35), newspaper clippings (Board's Exhibit 36) and the testimony of newspaper readers (R. 396) through numerous abstracts and summaries of doctorate and other theses on labor relations in general (see *e. g.* Board's Exhibits 70, 71, 92, 94, 95) to a best seller 'Steel Dictator," (R. 898) and comments by Judge Gary, following the 1892 strike. The petitioner took judicial notice of collegiate theses, as well as public records. Some of these documents pretended to be factual reports, but many were admittedly expressions of opinion.

In the hearings which were conducted at Pittsburgh and which involved the actual discharges, the petitioner made some effort to adhere to ordinary standards of relevancy, but at the later hearing in Washington, the bars to irrelevant and prejudicial material were entirely dropped. It is significant that at this latter hearing the respondent's case was combined in a joint hearing with the cases of Wheeling Steel Corporation and Crucible Steel Company, with evidence being admitted in bulk against the three employers, without regard to dissimilarities in their position.

The Board's evidence in Pittsburgh established that the respondent was a well integrated steel company, ranking about fourth in the industry. It was also shown that the industry in general was of substantial character, that its functions were important to the nation at large, and that the use of steel in other industries was widespread. Evidence was also offered to show that strikes had occurred in the industry, resulting in slackening of operations, or at least a transfer of the bulk of business from non-operating to operating units. Witnesses expressed the opinion that future strikes in the industry might affect other businesses, such as the manufacturers of automobiles and the railroads, because of the widespread use of steel. The 1919 strike was dwelt upon, although the respondent's operations were not affected by it (R. 267).

It is clear, from the Board's own procedure, that all of this was pure speculation. If the evidence had been merely irrelevant, it would not be worth mentioning. A more serious complaint is that evils in other branches of the industry and in other industries were used to blacken the reputation of the respondent. This unfortunate admission of highly prejudicial and immaterial testimony was carried to greater lengths in the joint hearing in Washington. A number of alleged experts appeared before the petitioner and embellished the record with the labor histories of the printing industry, the automobile industry, the rubber industry, the lumber industry, the railroads and the Pullman Company. The virtues of the closed shop in the printing and garment trades were praised and the lack of organization in lumber mills condemned, with a word of laudation for the I. W. W. Unfair practices in other industries, such as the "black list", were dwelt upon and no doubt the petitioner's indignation at these disclosures was in part visited upon the respondent. Some of the experts not

only spoke of their own beliefs, but asserted the right to speak for all of the experts in the field.

It is a defiance of reason and good judgment to argue that guesswork evidence of this character can bridge the distance between the discharge of thirteen employees and the movement of interstate commerce. It may have proved that some economists believe that the unionization of industry on a national scale is desirable for the nation at large, or that the experts are not satisfied with our constitutional system, but it does not show that the respondent's relations with its production employees have any direct bearing upon interstate commerce. Perhaps its object was to establish that unionization would be conducive to efficiency in the respondent's plants, but the materiality of such a conclusion, even if it were sound, is difficult to perceive.

5. The Decision of the Board.

In the last analysis, the substance of the decision was that the respondent must reinstate ten discharged employees, with compensation for time lost during their period of unemployment. However, in certain respects, the decision went beyond this by making negative orders, requiring the respondent to cease and desist "from interfering with its employees in their Union activities and from discouraging membership in the Union by discrimination in regard to hire or tenure of employment". These negative restraining orders were based upon the same state of facts, that is, the discharges of the ten complaining witnesses, which are designated as "unfair labor practices" in the decision of the Board (R. 33 to 42).

Finally, the Board has ordered the respondent to take affirmative action in posting "notices to its employees in conspicuous places in each shop and yard of

the Aliquippa Works, stating (1) that the respondent *will not discharge* or in any manner discriminate against members of, or those desiring to become members of, Beaver Valley Lodge No. 200, Amalgamated Association of Iron, Steel and Tin Workers of North America, or persons assisting said organizations or otherwise engaging in Union activities * * *". (R. 45) This most unusual direction will receive comment at another point.

SUMMARY OF THE ARGUMENT.

The respondent contends that the National Labor Relations Act is, in reality, a regulation of labor relations, and not of interstate commerce, and that, as a consequence, it is not within the power of Congress to enact. Even if it should be considered a true regulation of interstate commerce, it still has no application to the respondent's relations with its production employees, because they are not subject to regulation by the Federal Government. In addition, the provisions of the Act which the petitioner seeks to apply in the present case are invalid, because they violate Section 2 of Article III of the Constitution, as well as the Fifth and Seventh Amendments to the Constitution.

The respondent is a corporation engaged in the manufacture of iron and steel products. In this connection, it owns and operates a large steel plant at Aliquippa, Pennsylvania, in which are employed approximately ten thousand men. The present case is, in reality, a controversy between ten individuals who were formerly employed by the respondent in production work at this plant, and the respondent. These individuals, with three others, filed a complaint with the petitioner, the National Labor Relations Board, charging that they had been discharged or demoted by the

respondent because of union affiliations. The respondent objected to the jurisdiction of the petitioner, but its motion to dismiss was overruled and the petitioner, after hearing, determined that the complainants had been wrongfully discharged and ordered their immediate restoration, with compensation for lost pay.

POINT I.

The Findings of the Petitioner on Jurisdictional Issues Are Subject to Review.

The petitioner has endeavored to justify its assumption of jurisdiction over the respondent's employment relations, by making a finding that the respondent has engaged in unfair labor practices "affecting commerce" within the definition of the National Labor Relations Act. The respondent insists that the facts upon which this "finding" pretends to be based are, *in law,* insufficient to justify any such conclusion, and that this court is entitled to reexamine the facts for the purpose of determining the jurisdictional issue. The findings of fact of an administrative agency, such as the petitioner, on constitutional or jurisdictional issues, are not conclusive. *Crowell v. Benson,* 285 U. S. 22 (1932); *St. Joseph Stock Yards v. United States,* 298 U. S. 38 (1936).

POINT II.

The National Labor Relations Act Can Have No Application to Transactions Between the Respondent and Its Production Employees.

A.

THE NATIONAL LABOR RELATIONS ACT IS NOT A TRUE REGULATION OF INTERSTATE COMMERCE.

1. The problem of measuring the constitutional validity of the National Labor Relations Act is simplified if the inquiry pays true heed to the literal requirements of the Constitution. The power of Congress is clearly defined by the Commerce Clause of the Constitution and considerations of political expediency have no weight in fixing the dividing line between the powers of Congress and the reserved powers of the several States. The argument of the petitioner is, in the last analysis, a plea that, from an economic standpoint, Congress *should* have power to apply its legislation to the respondent's employment relations. This, we submit, is entirely beside the point, if the exercise of such power would run counter to the Constitution.

The jurisdiction of Congress, under the commerce clause of the Constitution, includes the power to regulate, restrict and protect interstate commerce, but it does not include, and was not designed to include, the right to use such jurisdiction as a pretext for legislation which interferes with the local sovereignty of the separate States. Since *Gibbons v. Ogden,* 9 Wheat. 1 (1824), this Court has adhered to the principle that while Congress has power over the movement of persons and commodities among the several States, it has no jurisdiction to regulate activities which may precede or follow, but are not, commerce. The use of an admitted power of Congress as a pretext to interfere

with local activities which are not subject to its jurisdiction, is to be condemned. The commerce clause will not serve as an excuse for legislating with respect to labor relations, which do not constitute a part of interstate commerce.

2. The legislative history of the National Labor Relations Act and its substantive provisions are sufficient to demonstrate that the Act, although disguised as a regulation of interstate commerce, is, in actuality, a regulation of labor. The terms of the statute apply to *almost every employer and every employe* (Section 2), although the jurisdiction of the petitioner to enforce it is somewhat circumscribed.

The provisions of the statute, if carefully analyzed, will indicate that Congress is primarily concerned with the protection and establishment of labor organizations. The provisions condemning plant unions and sanctioning "closed shop" agreements, bear no reasonable relation to interstate commerce. Similarly, the express preservation of the right to strike indicates that Congress was not interested in preventing interruptions to the movement of commerce. The interference with the employer's discretion to hire and fire is another reason for believing that efficiency in the shipment of products in interstate commerce has not been the object of the statute.

3. Congress has endeavored to save the statute from the taint of invalidity by confining its enforcement to transactions "affecting commerce", which the Act defines as transactions which burden commerce *or lead or tend to lead to a labor dispute* which burdens commerce (Section 2). Despite this limitation on the enforcement of the Act, the substantive provisions make no such exception and are, in fact, broad enough to cover almost every employment relation (Section 2).

The petitioner has followed the same involved line of reasoning in endeavoring to "find" that the respondent's operations "affect commerce". Like Congress, it has found itself faced with the task of piling premise upon premise and hypothesis upon hypothesis to reach the conclusion that the discharge of a few production employees at the respondent's plant has a vital bearing upon the movement of interstate commerce. We submit that the ultimate fact remains that Congress has enacted a labor law, and not a regulation of commerce, and it does not help to sustain the pretext that there may be an indirect connection between the two. *Carter v. Carter Coal Company et al,* 298 U. S. 238 (1936).

B.

THE NATIONAL LABOR RELATIONS ACT CAN HAVE NO APPLICATION TO THE RESPONDENT'S RELATIONS WITH ITS PRODUCTION EMPLOYEES.

1. Although the respondent purchases raw materials, which have a point of origin in other States, and ships a large portion of its finished products across State lines, its production activities, including its employment relations, are not thereby subjected to the jurisdiction of Congress. *Howard v. Illinois Central Railroad Co.,* 207 U. S. 463 (1908). There is no logical or legal connection between the respondent's limited participation in interstate commerce and the union affiliations of its production employees. *Adair v. United States,* 208 U. S. 161 (1908); *Hammer v. Dagenhart,* 247 U. S. 251 (1918); *Railroad Retirement Board v. The Alton Railroad Company et al.,* 295 U. S. 330 (1935) *supra.*

2. The principle which impeaches the validity of the National Labor Relations Act, viz., that Federal power over interstate commerce *must* be confined to

bona fide regulation of the movements of commerce, likewise prevents the application of the statute in the present case. An unbroken line of decisions under the commerce clause has established that manufacturing and production activities are not in or a part of interstate commerce, even though they may be preceded or followed by the movement of materials between States. *Arkadelphia Milling Co. v. St. Louis & Southwestern Railways Co.*, 249 U. S. 134; *Oliver Iron Co. v. Lord*, 262 U. S. 172 (1923); *Industrial Association v. United States*, 268 U. S. 64 (1925). Although most of the decisions have dealt with the police or taxing powers of the States, they are based upon the fundamental principle that manufacturing activities are subject to the exclusive jurisdiction of the separate States.

The distinction between the local manufacturing activities of a business and its subsequent or precedent participation in interstate commerce has been maintained in the field of labor relations. *Hammer v. Dagenhart*, 247 U. S. 251 *supra; Industrial Accident Commission v. Davis*, 259 U. S. 182 (1922). Even though an employee may be employed in indirectly assisting the movement of products in interstate commerce, his relationship to his employer is a status existing wholly within the State, whose incidents, such as wages, hours of labor and the like, are purely domestic in character. *Carter v. Carter Coal Company et al*, 298 U. S. 238 (1936).

Congressional regulation of the labor relations of interstate carriers furnishes no precedent for the present Act. Because interstate carriers are instrumentalities of the movement of commerce, and because they are public utilities, Congress has subjected them to an exhaustive scheme of regulation, of which the labor legislation is merely an incident. As a result, the decision in *Texas & New Orleans Railroad Co. v. Brother-*

hood of Railway & Steamship Clerks et al, 281 U. S. 548 (1930) is not controlling.

3. Decisions, such as *Stafford v. Wallace,* 258 U. S. 495 (1922) and *Chicago Board of Trade v. Olsen,* 262 U. S. 1 (1923), which sustain Federal regulation of Stockyards and Grain Exchanges, have no application to the present case. Grain Exchanges and stockyards are instrumentalities of interstate commerce in much the same sense as the actual carriers of interstate commerce. They are focal points through which the stream of commerce in grains and cattle sweeps on its way from producer to the ultimate consumer. The activities which were regulated in both cases were activities in the stream of commerce and exerted a direct effect upon its flow. Neither case sanctions the extension of the doctrine to production activities which may indirectly affect the stream of commerce. *Carter v. Carter Coal Company et al.,* 298 U. S. 238 *supra.*

4. The petitioner relies upon decisions which have upheld the application of the Anti-Trust Laws to industrial conspiracies, such as *Coronado Coal Company v. United Mine Workers,* 268 U. S. 295. These were cases involving conspiracies to restrain interstate commerce by means of local combinations. The element of an *intentional* interference with the movement of interstate commerce was essential in these cases, not only because an intent to restrain commerce was a part of the proscribed offense, but also because the existence of such an intent made the effect on interstate commerce necessarily direct. This is shown by a comparison of the first Coronado case (*United Mine Workers v. Coronado Coal Co. et al,* 259 U. S. 344 (1922)), where there was no intent, with the second (*Coronado Coal Co. v. United Mine Workers,* 268 U. S. 295, *supra*), where there was both direct and inferential evidence of

intent. (Cf. *United Leather Workers v. Herkert & Meisel Trunk Co.*, 265 U. S. 457 (1924)).

The petitioner's efforts to show an intentional restraint in the present case are futile. Even if a strike should occur at the respondent's plant, the respondent could not be held responsible for the *voluntary* intervening act of outside agencies. The suggestion that the respondent might be charged with an implied intent to destroy interstate trade, if a labor dispute should occur, is obviously unsound.

The conspiracy cases, such as *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344, *supra*, and *Local 167, etc. v. United States*, 291 U. S. 293 (1934), although primarily concerned with the application of the Anti-Trust Laws, prove the fallacy of the petitioner's argument, because they establish that Congress *cannot* regulate local transactions or relations unless they exert a *direct* effect on interstate commerce. The definition of "affecting commerce" in the National Labor Relations Act is a confession of the indirectness of the connection between the respondent's labor relations and the movement of interstate commerce. See *Schechter Corporation v. United States*, 295 U. S. 495, *supra; Industrial Association v. United States*, 268 U. S. 64 (1925). The petitioner calls attention to the fact that strikes may and frequently do produce an inhibitory effect on the movement of interstate trade to and from the affected area. This is the fundamental error in the petitioner's argument, in that it assumes that it need only establish the connection between strikes and the stoppage of commerce. There has been no strike or labor dispute in the present case. In actuality, the petitioner means that the respondent's discharge of ten employees *might* have led to dissatisfaction, which *might* have led to a labor dispute, which *might* have led

to a strike and a consequent interruption of interstate commerce.

The findings of Congress that discriminatory discharges may lead to an interruption of commerce, are unavailing. A declaration by Congress of the need of regulation will not automatically justify its action, where its legislative findings run counter to established rules of construction, which hold that there is no necessary and direct connection between the relations of an employer and his employees and the movement of interstate commerce. In this respect, the present case is clearly controlled by the decision in *Carter v. Carter Coal Co.*, 298 U. S. 238, *supra*.

There are dangerous implications in the petitioner's argument. If it be accepted, there would be no reason why Congress should not use its power over interstate commerce as a pretext to stifle the sovereignty of the States. We therefore believe that the Court will not suffer the powers of the States to be whittled away by a statute which piles speculation upon speculation to attain its ends. *United States v. Butler et al*, 298 U. S. 1; *Schechter Corporation v. United States*, 295 U. S. 495, *supra*.

POINT III.

THE PROCEDURAL PROVISIONS OF THE ACT VIOLATE SECTION 2 OF ARTICLE III OF THE CONSTITUTION AND THE SEVENTH AMENDMENT TO THE CONSTITUTION.

The National Labor Relations Act confers upon the petitioner *exclusive* original jurisdiction over controversies between an employee and his employer as to the propriety of the employee's discharge, and the Board is authorized to render affirmative relief to the employee, including the restoration of his employment and

compensation for lost wages. The findings of fact of the Board are conclusive and only objections made before the Board will be heard. The act does not make any provision for a trial *de novo* in the constitutional courts on constitutional or jurisdictional issues.

We submit that the Act is invalid because it authorizes the Board to award a money judgment, depriving the employer of his right to trial by jury in cases involving more than twenty dollars. If, as the petitioner contends, the action before the Board should be considered in the nature of a suit in equity, with authority in the Board to award a mandatory injunction restoring employment, with incidental damages for back pay, then the Act violates the provision of Article III of the Constitution, for it deprives the constitutional courts of their authority to try constitutional and jurisdictional issues.

The present case presents a controversy between employees and the respondent, in which the petitioner has directed the restoration to employment of the complaining employees, with back pay. This being the case, it is a controversy between private citizens, enforcing private rights. The failure to provide means for a trial *de novo* of jurisdictional issues in such a case is fatal. *Crowell v. Benson,* 285 U. S. 22 (1932).

The proceedings of the Board are not comparable to those of the Federal Trade Commission, for the latter acts only in the public interest, where the United States is, in effect, the plaintiff, and it does not assume the right to enforce or redress private rights. In addition, the Federal Trade Commission does not exercise authority to grant any affirmative relief, but merely enjoins the continuance of unfair competitive practices or of violations of the Anti-Trust Laws. Where private citizens seek relief for damage under such laws, they

are obliged to resort to the District Courts. Cf. *Federal Trade Commission v. Klesner*, 280 U. S. 19 (1929).

POINT IV.

The Provisions of the Act Which the Petitioner Seeks to Apply to This Respondent Are Invalid Under the Fifth Amendment to the Constitution.

A.

THE DECISIONS OF THIS COURT IN ADAIR v. UNITED STATES AND COPPAGE v. KANSAS ARE DETERMINATIVE.

The real issue in the present case is the alleged commission by the respondent of unfair labor practices in the discharge of union employees. Section 8 (3) of the Act, which prohibits discrimination in regard to hire or tenure of employment and which has been applied to the respondent by the petitioner, is an arbitrary and unlawful interference with the respondent's freedom of contract. *Adair v. United States*, 208 U. S. 161 (1908); *Coppage v .Kansas*, 236 U. S. 1 (1914). Section 8 (3) of the Labor Act presents a much greater menace to the respondent's freedom of contract than the enactments which were denied validity in the Coppage and Adair cases, because it does not merely punish discriminatory contracts or discharges, but authorizes the Board to direct the restoration of employment, thereby forcing the respondent to enter into a contractual relationship against its will.

The Adair and Coppage cases are not affected by the decision of this Court in *Texas & New Orleans Railroad Co. v. Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548 (1930). That case did not involve a statutory prohibition against discriminatory discharge, but merely the violation by the carrier of an

order of court which had enjoined interference with the designation of representatives by its employees for purposes of voluntary mediation under the Act. The power of the Court to require the defendant carrier to purge itself of contempt is no precedent for a statute authorizing an administrative agency to require the reemployment of an unsatisfactory employee.

There is another distinction between the facts of the *Texas & New Orleans Railroad Co.* case and the issues of the present case. The former dealt with an interstate carrier, which is a public utility. Congress has always subjected interstate carriers to an exhaustive scheme of regulation and has the right to compel them to continue in business to serve the public. By reason of its power to compel the continuity of interstate movement, Congress might also have the right to require the carriers to employ certain individuals. The respondent is not a public utility and Congress has no authority to compel it to continue its business. It, therefore, has no authority to make it enter into contractual engagements with its employees on terms which are not of its own making. A comparison of *Charles Wolff Packing Co. v. Court of Industrial Relations*, 262 U. S. 522 (1923), with *Wilson v. New*, 243 U. S. 332 (1917) points the distinction. It should also be observed that the mere size of the respondent's operations does not put it in the category of businesses "affected with a public interest." Cf. *Williams v. Standard Oil Co.*, 278 U. S. 235 (1929).

B.

THE PETITIONER'S ORDER CONSTITUTES AN UNLAWFUL INTERFERENCE WITH THE RIGHT OF THE RESPONDENT TO MANAGE ITS OWN BUSINESS.

The law has always been hesitant to interfere in questions of employer-employee relationships. From the standpoint of the employee, the law has recognized that he should not be forced into a relationship which may be distasteful, and from the employer's viewpoint, the courts have held that the right to judge the capabilities of employees is absolutely essential to the efficient management of the employer's business. The question of retaining or discharging an employee involves delicate considerations of discretion which the law is loath to attempt to weigh. The facts of the present case show the dangers of bureaucratic interference, in that each discharge involved some admitted fault on the part of the complaining employee, but the petitioner determined that it was better qualified to decide and that the respondent's action had been too drastic. This is clearly an interference with the normal right of the respondent to manage its own business, because it is a dictatorial usurpation of the respondent's discretion to determine the capabilities of its employees.

Another dangerous implication of the law and of the petitioner's decision is that it confers a kind of civil service status upon union employees, which will inevitably encourage laziness, insolence and inefficiency. This is confirmed by a notice which the petitioner, in its decision, has ordered the respondent to post in its plants, to the effect that it will not discharge members of the union. It would be the equivalent of informing the employees that if they become affiliated with the union, they will be thenceforth immune from discharge.

We submit that the underlying philosophy of the National Labor Relations Act is a constant threat to the respondent's normal right to manage its own business. Not only does the Act provide, in effect, that an unqualified bureau will sit as a higher court over the respondent's employment office, but it also ordains that the respondent *must* deal with whatever union may be selected by a majority of its employees and refuse to negotiate with other employees or their representatives. The power which it delegates to a majority of the employees to bind the minority is arbitrary and unfair and will necessarily lead to the suffocation of minorities and to the closed shop, forcing the employer to herd his employees into an organization which is not of their own choice. This will in turn seriously disturb the discipline and morale of the respondent's employees, with obvious injury to them and to the respondent. (Cf. *Carter v. Carter Coal Co. et al,* 298 U. S. 238, *supra.*)

ARGUMENT.

POINT I.

The Findings of the Petitioner, the National Labor Relations Board, on Jurisdictional and Constitutional Issues, Are Subject to Review by This Court.

The National Labor Relations Act provides, in Section 10 (e), that "the findings of the Board as to the facts, if supported by evidence, shall be conclusive". Again, in Section 10 (b), the statute declares that "rules of evidence prevailing in Courts of law or equity shall not be controlling". It has been suggested in the petitioner's brief that the Board has found that the acts of the respondent in discharging the employees named in the complaint tended to lead to a labor dispute which would burden or obstruct commerce, and therefore, "affect commerce" as a matter of law. Although the petitioner's decision did contain findings which are substantially to this effect, these findings cannot, of themselves, justify the action of the petitioner in assuming jurisdiction over the respondent's industrial relations. We believe that this Court is entitled to cut through the findings of the petitioner and to examine the ultimate facts, and that such an examination will conclusively show that, under accepted principles of constitutional construction, the transactions described in the complaint were, *as a matter of law,* not subject to regulation under the National Labor Relations Act, from which it must follow that the petitioner had no jurisdiction over the respondent or over the subject matter of the controversy.

The decision of this Court in *Crowell v. Benson,* 285 U. S. 22 (1932) entitles the respondent to a reexamination of the facts upon which the jurisdiction of the peti-

tioner is said to depend. In holding that an employer was entitled to a trial *de novo* on a question of jurisdiction under the Longshoremen's and Harbor Workers' Compensation Act, and that the findings of a deputy commissioner, appointed pursuant to the Act, on jurisdictional issues were not binding, the Court said:

> "The recognition of the utility and convenience of administrative agencies for the investigation and finding of facts within their proper province, and the support of their authorized action, does not require the conclusion that there is no limitation of their use, and that the Congress could completely oust the courts of all determinations of fact by vesting the authority to make them with finality in its own instrumentalities or in the executive department. That would be to sap the judicial power as it exists under the Federal Constitution, and to establish a government of a bureaucratic character alien to our system, wherever fundamental rights depend, as not infrequently they do depend, upon the facts, and finality as to facts becomes in effect finality in law. (p. 57)
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> "In the present instance, the argument that the Congress has constituted the deputy commissioner a fact-finding tribunal is unavailing, as the contention makes the untenable assumption that the constitutional courts may be deprived in all cases of the determination of facts upon evidence even though a constitutional right may be involved. Reference is also made to the power of the Congress to change the procedure in courts of admiralty, a power to which we have alluded in dealing with the function of the deputy commissioner in passing upon the compensation claims of employees. *But when fundamental rights are in question, this*

Court has repeatedly emphasized 'the difference in security of judicial over administrative action.'" (Italics supplied) (pp. 60-61)

It might well be argued that the National Labor Relations Act is fatally defective because it makes no provision for a trial *de novo* on jurisdictional issues. Although the Circuit Court of Appeals and this Court may review the record which is made before the Board, a mere re-examination of the recorded evidence is in no sense the equivalent of a trial *de novo* and the Act makes no provision for a thorough judicial inquiry into fundamental questions of jurisdiction. But apart from this point, which will be considered later, the existence of a causal connection between the transactions over which the Board assumes jurisdiction in particular cases and the movement of interstate commerce is necessarily a question of law and the constitutional courts may not be deprived of an opportunity to make a determination of the facts upon which the connection is said to depend.

It is no answer to this to contend that the petitioner is a quasi-judicial, rather than an executive agency. If such a contention could grant finality to the petitioner's decisions on issues involving its own right to assume jurisdiction, the constitutional powers of the judiciary would be seriously impaired and the right of a citizen to resort to the constitutional courts for the protection of his rights completely abrogated. This principle has been reiterated in many decisions of this Court and finds its latest expression in *St. Joseph Stock Yards v. United States*, 298 U. S. 38 (1936), in the statement that

> *"When the Legislature acts directly, its action is subject to judicial scrutiny and determination in order to prevent the transgression of these limits of power. The Legislature cannot preclude that*

scrutiny or determination by any declaration or legislative finding. Legislative declaration or finding is necessary subject to independent judicial review upon the facts and the law by courts of competent jurisdiction to the end that the Constitution as the supreme law of the land may be maintained. *Nor can the Legislature escape the constitutional limitation by authorizing its agent to make findings that the agent has kept within that limitation.* Legislative agencies, with varying qualifications, work in a field peculiarly exposed to political demands. Some may be expert and impartial, others subservient. It is not difficult for them to observe the requirements of law in giving a hearing and receiving evidence. But to say that their findings of fact may be made conclusive where constitutional rights of liberty and property are involved, although the evidence clearly establishes that the findings are wrong and constitutional rights have been invaded, is to place those rights at the mercy of administrative officials and seriously to impair the security inherent in our judicial safeguards.

"That prospect, with our multiplication of administrative agencies, is not one to be lightly regarded. It is said that we can retain judicial authority to examine the weight of evidence when the question concerns the right of personal liberty. But, if this be so, it is not because we are privileged to perform our judicial duty in that case and for reasons of convenience to disregard it in others. The principle applies when rights either of person or of property are protected by constitutional restrictions. *Under our system there is no warrant for the view that the judicial power of a competent court can be circumscribed by any legislative arrangement designed to give effect to administrative*

action going beyond the limits of constitutional authority." (Italics supplied) (pp. 51-52)

The effect of this principle is that this Court may inquire not only into the reasonableness of the findings of Congress, as expressed in the National Labor Relations Act, but also into the propriety of the petitioner's decision. However much power Congress may have designed to confer upon the National Labor Relations Board as a fact-finding body, it is fundamental that the Board may not lift itself by its own bootstraps and find that it has jurisdiction where, as a matter of law, no such jurisdiction exists. If this were not the rule, fundamental rights would be at the mercy of a subservient administrative agency, and a body such as the petitioner could find its own way into jurisdiction, even where the ultimate facts are *legally* insufficient to support its authority.

The grave consequences which this Court pointed out in the decisions referred to above are perhaps illustrated by the facts of the present case. In one sense, the National Labor Relations Act is itself responsible for the atmosphere of hostility which pervaded the proceedings before the Board, because of the unrestrained powers which it places in the petitioner. The procedural provisions of the Act have constituted the petitioner an investigator, a prosecutor and a judge, at one and the same time. Under Section 11, investigatory powers of the widest character are conferred upon the Board. It is given "access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question." Proceedings against employers may be initiated by the petitioner and it is permitted to sit in judgment on its own complaints. Its agents are sent out to make investigations and its

own attorneys prosecute employers on behalf of the petitioner, while the petitioner endeavors to act as the judge. The widest latitude in conducting hearings is permitted. The rules of evidence pervailing in Courts of law or equity are not controlling, and yet, the findings of the Board on questions of fact are made conclusive. It is true that other agencies, such as the Federal Trade Commission, have similarly wide powers, but they, for the most part, deal with broad questions of public interest, and not individual cases, where the factor of personal relationship is present and where, from the very nature of the case, the hostility and bitterness of a disgruntled employee are apt to intrude.

The determination of the petitioner to reach the conclusion that the respondent was engaged in interstate commerce was evident throughout the hearing. In addition to its natural inclination to extend and strengthen its own jurisdiction (Cf. First Annual Report of the National Labor Relations Board, Page 135) the record bears frequent evidence of the petitioner's antagonism towards employers who have questioned the constitutionality of its asserted powers. The following extracts from questions asked by one of the members of the Board are typical:

> "* * * we are be-set by injunctions and lawyers who come and say that it is a denial of all of the rights of the employers even to allow them to participate in an election to choose their own representative? (page 811)
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> * * * * * * *
>
> "*Mr. Carmody*:
>
> In view of the fact that the country is full of lawyers that do not believe that these laws ought to be passed, or that they are constitutionally affected, it might be well to get that

list into the libraries of some of our law schools, with the hope that not only economists but lawyers would have some appreciation of the value of a civilized method of dealing with labor relations." (Page 963).

* * * * * * *

"*Mr. Carmody*:

Just one more question. I have been impressed during the past few days of these hearings with statements that practically all of the witnesses made who are expert in this field, that these efforts, that some regularization of employment relationships began in the United States more than fifty years ago, and here we are, after fifty years of effort, and after literally hundreds of millions of dollars have been spent—dollars, of course, that must be paid for by people out of goods of industry—and we are still fighting about the same thing, and we still have employers and their lawyers who maintain that the Government has no right to assist with these relations by the process of negotiation and by requiring that employers deal in a civilized way with employees.

"What do you see ahead? Is it a completely futile thing or is there a tendency to improve this condition?" (Page 967)

POINT II.

The National Labor Relations Act, Under Any Construction Consistent With the Provisions of the Constitution, Can Have No Application to Transactions Between the Respondent and Its Production Employees.

It is the respondent's position that the National Labor Relations Act is, in reality, a labor statute, and not a true regulation of interstate commerce, from which it should follow that the Act is invalid in *toto*. The petitioner contends, however, that the statute may be saved from the taint of invalidity by attributing to Congress the intent to confine its application to situations which Congress may lawfully regulate under the interstate commerce clause of the Federal Constitution. The respondent's argument will therefore be directed to both issues, maintaining with respect to the first that the Act is unconstitutional in *toto*, and, with respect to the second, that it cannot be lawfully applied to the respondent. However, since both issues depend, to a large extent, upon the same considerations, it is impossible to observe a definite line of separation throughout the argument, and we therefore ask that our arguments with respect to the question of constitutionality be considered as bearing, with the same force, upon the question of the lawful scope of the particular provisions of the Act which are in question in this case.

A.

The National Labor Relations Act Is a Labor Act and Not a True Regulation of Interstate Commerce.

Under this aspect of the case it is necessary to make an inquiry into the objects of the National Labor Relations Act, to determine whether it represents an hon-

est endeavor to regulate commerce among the several states, or an usurpation of the reserved powers of the separate states to control questions of internal policy. As a consequence, the question resolves itself into two subsidiary questions, the first dealing with the scope of Congressional power over interstate commerce, and the second with the nature and objects of the statute involved.

1.

THE POWER OF THE CONGRESS OF THE UNITED STATES UNDER THE INTERSTATE COMMERCE CLAUSE OF THE CONSTITUTION IS LIMITED TO THE BONA FIDE REGULATION OF INTERSTATE COMMERCE.

The problem of measuring the constitutional validity of the National Labor Relations Act, in its application to the industrial relations of the respondent, is greatly simplified if the inquiry begins with the Constitution itself and pays true heed to the literal requirements of the document. Much of the dust of controversy which obscures the question of determining the validity of the labor act and similar legislation has been stirred up by arguments and discussions which have lost the true meaning of the constitutional phrase in an effort to remodel our political system on a basis of expediency, by attributing to the central government powers which might be most conveniently exercised from Washington. And as a consequence, the plenary powers of the States, like the Charter on which they rest, are cast aside in an endeavor to reach a theoretically convenient goal. The mass of hypothetical evidence which was received by the Board in its joint hearing in Washington (Statement of Facts, pages 19 to 21), presents a graphic picture of this improper approach to the problem.

Arguments of this character, which advocates of a centralized government habitually employ, may have somewhat blurred the line which lies between the reserved powers of the states and the jurisdiction of the Federal government. More than that, they have a spurious persuasiveness, in that they are apt to distract attention from the fundamental phrase of the Constitution to the political issue of national versus local supremacy. So with the petitioner's brief. Deftly it paints the evils of strikes and lockouts and plausibly it argues that Congress *should* be the agency to deal with them, but the conclusive answer is that the Constitution has vested in another sovereignty the power to regulate local employment relations.

The Constitution provides in Section 8 of Article I that "The Congress shall have power * * * to regulate Commerce with Foreign nations and among the several States, and with the Indian Tribes * * *"

The draftsmen of the Constitution foresaw that if economic and political intercourse between the States was to be fostered, and the welfare of the nation protected, it would be necessary to curb the selfish interests of the individual States where they might easily conflict with the interests of the federation as a whole. Therefore, jurisdiction over interstate commerce—a fertile field for controversy among individual States—was granted to the Federal Government. Its jurisdiction involves the power *to regulate, restrict and protect interstate commerce, but it does not include, and was not designed to include, the right to use such jurisdiction as a pretext to interfere with the local sovereignty of the States.* If this one premise is carefully borne in mind, the apparent confusion which sometimes arises as to the limitations on the powers of each of the concurrent

governments and which pervades the petitioners' argument is to a large extent removed.

Breadth and meaning were given to the commerce clause in *Gibbons v. Ogden,* 9 Wheat. 1 (1824). It is apparent from the language of the case, considered as a whole, that Chief Justice Marshall, although a firm believer in a strong centralized government, had no thought but that the commerce clause meant just what it says, that is, that Congress may regulate "commerce among the States." Even under the most careful scrutiny, the opinion proceeds solely on the principle that Congress has been accorded power over commerce, that is, the movement of persons and commodities among the several States, and not over farming or mining or manufacturing,—*things which may precede or follow, but are not commerce.*

The true meaning of the commerce clause, as exemplified by this decision, has sometimes been lost sight of in recent years. The argument is often made, as in the petitioner's brief, that the nation has come to a new conception of commerce, that business has outgrown the State and has become a matter of national concern, and that our purely internal political, economical and social life is so intimately connected with our national commerce that it has been swallowed up in the latter's importance. On this hypothesis, it is not difficult to argue that the wages of a newsboy, the prices of a grocer and the advertising policies of a local dentist in some degree affect incomes and business. The impact may be slight, but in the end, it may be contended, it either encourages or discourages commerce among the States.

Despite this confusion of issues, the Constitution, in the last analysis, still requires the separation of State and Federal power. The decision of this Court, in *A. L.*

A. Schechter Poultry Corporation, et al., v. United States, 295 U. S. 495 (1935), is a mandate that the literal requirements of the Constitution must not be ignored. It may be true that purely internal affairs do indirectly affect interstate commerce, just as interstate commerce bears indirectly upon internal affairs, but while this might be urged as a reason for altering our Constitutional form of government, it is not an excuse for attempting to obliterate the Constitutional distinction between commerce and that which is not.

In other recent decisions, the same principle has been affirmed and the power of Congress confined to true regulations of commerce as distinguished from regulations of internal affairs under the guise of interstate commerce legislation. Thus in the *Railway Pension Case,* [*Railroad Retirement Board v. Alton Railroad Company, et al.,* 295 U. S. 330 (1935)] it is said that

> "The question at once presents itself whether the fostering of a contented mind on the part of an employee by legislation of this type is in any just sense a regulation of interstate transportation. If that question be answered in the affirmative, obviously there is no limit to the field of so-called regulation. The catalogue of means and actions which might be imposed upon an employer in any business, tending to the satisfaction and comfort of his employees, seems endless.
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> * * * * * * *
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> We think the answer is plain. These matters obviously lie outside the orbit of congressional power." (p. 368)

Similarly, in *United States v. William M. Butler, et al.,* 297 U. S. 1 (1936), the Agricultural Adjustment Act fell, because it was not within the scope of the regulatory power of Congress. In refusing to be blinded by the

pretense that the legislation was justified under the taxing power of the Federal government, this Court declared:

> "The act invades the reserved rights of the States. It is a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the federal government. The tax, the appropriation of the funds raised, and the direction for their disbursement, are but parts of the plan. They are but means to an unconstitutional end.
>
> From the accepted doctrine that the United States is a government of delegated powers, it follows that those not expressly granted, or reasonably to be implied from such as are conferred, are reserved to the states or to the people. To forestall any suggestion to the contrary, the Tenth Amendment was adopted. The same proposition, otherwise stated, is that powers not granted are prohibited. None to regulate agricultural production is given, and therefore legislation by Congress for that purpose is forbidden.
>
> It is an established principle that the attainment of a prohibited end may not be accomplished under the pretext of the exertion of powers which are granted." (p. 68)

These decisions provide a sound basis for discussing the constitutionality of the National Labor Relations Act, because they enable us to perceive the real issue. The line between the divergent jurisdictions is defined by our political charter, it must be obeyed and neither the state nor the federal government may crowd the other from its allotted territory by an appeal to a broader construction than the instrument will bear. The federal government may regulate and protect the streams of commerce and the beds through which they

run, but *it may not say that all activities are commerce, or concern commerce, and thereby hope to intrude in matters which are traditionally the concern of the separate states.*

2.

THE NATIONAL LABOR RELATIONS ACT IS, ON ITS FACE, A LABOR LAW AND NOT A BONA FIDE REGULATION OF COMMERCE.

If the principle which we have stressed under the preceding heading of this brief be accepted, then some pains must be taken to ascertain the true intent and purpose of the National Labor Relations Act. We submit that the legislative history of the statute and its own literal provisions are sufficient to demonstrate conclusively that the Act, although disguised as a regulation of interstate commerce, is in actuality a regulation of labor relationships, a conclusion which the petitioner's brief unwittingly confirms.

Congress has traditionally exercised plenary jurisdiction over the instrumentalities of commerce, that is, the carriers of persons and commodities in interstate commerce. Almost every session witnesses a new development in the field of transportation regulation. Railway labor legislation has been included in the scheme of regulation, since 1888, when Congress passed the Railroad Labor Disputes Act. Since then, it has passed other railway labor legislation, culminating in the Railway Labor Act of 1926, as amended by the Act of June 21, 1934.

Despite this development in railway labor legislation, which may be properly a function of the federal government, there has been no effort by Congress to meddle in the field of ordinary labor problems, with the exception of a few brief exclusionary references in the

Clayton Act, until 1932, when Congress passed the Anti-Injunction Act (Public Resolution No. 65, 72nd Congress, approved March 23, 1932). This Act, while it contained a declaration of the right to organize and bargain collectively, did not purport to legislate generally in the field of labor relations. Its primary object was to restrict the jurisdiction of the United States courts in awarding injunctions in labor disputes and to this extent, it purported to cover labor disputes of every kind and character. Shortly afterwards, in Section 77 of the Bankruptcy Act, which was amended March 3, 1933 to provide for the reorganization of railroads, Congress took a longer step by including a prohibition against the use of reorganization funds to foster so-called plant unions and discrimination against union members. Substantially the same provisions were incorporated in Section 77B of the Bankruptcy Act, as amended June, 1934, to govern the reorganization of insolvent corporations. As bankruptcy legislation, both amendments seem questionable; they are in reality, labor regulations, having no real connection with the processes of bankruptcy, except for the disguise which Congress has employed to justify their enactment.

After the enactment of Section 77 of the Bankruptcy Act, Congress made its first determined effort to establish widespread rules of collective bargaining in Section 7 (a) of the National Recovery Act, approved June 16, 1933. Although the Recovery Act was limited in enforcement to transactions occurring in interstate commerce, the codes which it promulgated purported to cover all industry and, by administrative interpretation, the labor provisions of Section 7 (a) were forced upon the country at large. To supplement Section 7 (a) Congress enacted Public Resolution No. 44 (approved June 19, 1934), creating a National Labor Relations Board to investigate controversies arising under Section 7 (a)

and to inquire into violations. This resolution, of course, fell with the so-called National Recovery Act in the *Schechter* case.

From the foregoing summary of congressional action in the field of labor relations, it will be observed that until the year 1932, Congress made no determined effort to inject itself into domestic problems involving labor relations, except in its own peculiar domain of interstate transportation and that traditionally Congress has itself recognized the limitations of the constitution. But then, beginning with the Anti-injunction Act and continuing through the National Labor Relations Act, it has definitely committed itself to a regulation of labor on a national scale. Two of its efforts, Section 7 (a) of the National Recovery Act and Public Resolution No. 44 have proved abortive. Its latest effort in this direction is the National Labor Relations Act.

The petitioner's brief leans heavily upon the history of Federal regulation of railway labor as an argument for its extension into other fields, but the point proves too much. For one thing, it draws into sharp contrast the inactivity of Congress, until recent times, in other fields of employment relations. What is perhaps more important, it betrays the petitioner's argument as being, in truth, an attack on our Constitutional system rather than a justification of the application of the Labor Act to the present case. If the power of Congress over railroads means that it may sweep all labor relations into its grasp, there is no reason why it should not be able to subject every business activity to the same exhaustive scheme of regulation which it has imposed upon interstate carriers. Statutory limitations on wages and hours, compensation laws, safety and fire regulations, and legislative supervision of factory conditions—all would be within the scope of Federal control

and there would be an end to the sovereignty of the separate States.

A brief summary of the provisions of the National Labor Relations Act will be sufficient to show that it is an extension of this recent Congressional departure from traditional policies and that it is, at least in its attempted application to the respondent, a regulation of labor and not a regulation of Commerce.

The title of the Act, as set forth in Section 16 is "The National Labor Relations Act." Section 1, which will be considered in detail at another point, is a so-called declaration of policy, which is, in the last analysis, a somewhat extended syllogism designed by Congress to support the constitutionality of the Act. Section 2 contains a number of definitions. Among the terms defined are "employer," "employee," "labor organization," "unfair labor practice," and "labor disputes." Sections 3, 4, 5 and 6 are administrative in character, creating the National Labor Relations Board and providing for its personnel, compensation and administrative powers and duties.

The substantive provisions of the Act are set forth in Sections 7, 8 and 9. Section 7 is a declaration of the right of employees to organize and bargain collectively in language reminiscent of Section 7 (a) of the National Recovery Act. Section 8 condemns five distinct so-called unfair labor practices. These unfair labor practices consist of the following:

(1) Restraint or coercion of employees in the exercise of the rights guaranteed in Section 7.

(2) Interference with, or contribution of support to, a labor organization by an employer.

(3) Discrimination in regard to hire or tenure of employment or as to any term or condition of employ-

ment in order to encourage or discourage membership in a labor organization.

(4) Discrimination against an employee because he has filed charges or given testimony under the Act.

(5) Refusal on the part of an employer to bargain collectively with the representatives of his employees.

Section 9 approaches the question of collective bargaining from the standpoint of the employee. Sub-division 9 (a) declares that the representatives selected by a majority of the employees shall be the exclusive representatives of all employees for purposes of collective bargaining. Sub-division 9 (b) empowers the National Labor Relations Board to select the appropriate unit of employees for the purposes of the selection of representatives and sub-division 9 (c) authorizes the Board to determine who are the exclusive representatives of the employees in particular instances. Sub-division 9 (d) provides for court procedure to enforce or set aside an order of the Board.

Section 10 is procedural in character. Under Subdivision 10 (a) the Board is authorized to prevent any person from engaging in any unfair labor practice affecting commerce. Section 10 (b) provides for the procedure to be followed by the Board in its hearings, while Section 10 (c) authorizes the Board to make findings of fact and to issue orders. Sub-divisions 10 (e) and 10 (f) provide for appellate procedure to enforce or set aside the orders of the Board, authorizing it to sue to enforce its orders in any Circuit Court of Appeals (or District Court, if the Circuit Courts are in vacation) in any circuit or district where the unfair labor practice took place or where the respondent resides or does business. The aggrieved party is allowed a more limited right of appeal. Sub-sections 10 (g), 10 (h) and 10 (i) are likewise procedural in character.

Section 11, while it also enlarges the procedure to be followed by the Board in its hearings, is primarily designed to confer drastic investigatory powers on the National Labor Relations Board. There is no indication that its powers in this respect are confined to transactions in interstate commerce. On the other hand the statute provides

> "The Board or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy, any evidence of any person being investigated or proceeded against, that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpoenas requiring the attendance and testimony of witnesses, and the production of any evidence that relates to any matter under investigation or in question * * * *."

To aid this investigatory function, provisions for the enforcement of subpoenas are inserted in Sub-section 11 (2) and under Sections 11 (3) and 11 (6) evidence normally unavailable is placed in the hands of the Board.

Section 12 is penal in character, providing for a fine or imprisonment for any resistance or interference with any member of the Board or any of its agents or agencies. Section 14 provides, in effect, that the Act is designed to supersede, in case of conflict, the labor provisions of the National Recovery Act, Public Resolution No. 44 and Section 77B of the Bankruptcy Act.

It will be seen from the foregoing that the National Labor Relations Act is in reality an expression of Congressional policy on the subject of organized labor. In fifty years of railway legislation, Congress, in a series of moves, has succeeded in organizing railway labor. The first step to organize industry on a wider scale was taken

in 1932, in the Anti-Injunction Act, through the process of strengthening the strike as a weapon of organizers and unions by weakening the ability of the federal judiciary to prevent the use of violence and intimidation and the seizure of property by strikers. Then, in the amendments to the Bankruptcy Act there came a flat declaration by Congress of its support of labor unions; surely it could not be contended that this was a legitimate exercise of the power over bankruptcies. Section 7 (a) of the Recovery Act followed a similar pattern but failed of its purpose because Congress had spoken too frankly. The National Labor Relations Act has followed as a device to achieve the same end, under the guise of a regulation of commerce.

But what is there in the Act to justify it as a regulation of interstate commerce. Its obvious aim is to organize labor on a national scale. Employers are directed to bargain with national labor unions and to recognize them in given instances as the sole representatives of their employees. The operation of plant unions is seriously impeded even though they may be, in the long run, far more conducive to industrial peace and prosperity than national labor organizations. Strangely enough, while the employer is not permitted to refuse employment to union members, no matter what he may think of the union's responsibility, he may, by a contract with an organization, refuse to employ men who are not affiliated with that organization. *Are these regulations of commerce?* If Congress is so interested in the continuity of interstate commerce, why should it permit an employer to take such a position? Again, the right to strike is expressly conserved by the Act, and the utmost freedom allowed organizations and employees to violate their contracts through the use of a strike. *Does this display a Congressional regard for the movement of interstate commerce?* The very function of the Board

in this case is to sit in judgment on the employer's discretion to hire and fire as he sees fit. Does this show any concern with the plant's efficiency or its ability to maintain a steady stream of finished products? No one but the blind can be deceived by the attempt to link the statute with the interstate commerce clause. In section after section, the purpose of Congress to promote the growth of outside labor organizations throughout industry is apparent. The Board itself confirms this interpretation of the Act; no one can read the record in this case without being convinced that the determined object of the petitioner and its servants is to organize the respondent's plant, along with the whole of the nation's industry.

A similar inconsistency has crept into the petitioner's argument in this case. The possibility of a strike which might cripple the respondent's operations is urged as a complete justification for the application of the will of Congress, but no explanation is given of the express legislative sanction of the right to strike or of the petitioner's avowed policy of encouraging unionization. Yet, which is the more likely to lead to a break in the continuity of interstate movement—the discharge of ten employees, which this Act purports to treat as an offense against the majesty of the Federal government, or a strike which it sanctions?

On the face of it, it would seem inconceivable that any such legislation would be the business of the federal government.

3.

THE FACT THAT THE NATIONAL LABOR RELATIONS ACT IS BY ITS TERMS CONFINED TO TRANSACTIONS "AFFECTING COMMERCE" DOES NOT BRING IT WITHIN THE POWER OF CONGRESS TO ENACT.

The National Labor Relations Act endeavors to stay within the restraints of the commerce clause in terminology and yet, at the same time, struggles to cover a large expanse of territory. Its operations are not confined to transactions in interstate commerce, which would be the case with respect to interstate carriers, but literally reach to all matters "affecting commerce", by using this somewhat novel conception of constitutional law, which has been given currency by similar expressions in the National Recovery Act.

To appreciate the scope which Congress has attempted to give the statute and the meaning which it seeks to apply to this phrase, "affecting commerce", we must begin with the Declarations of Policy contained in Section 1 of the Act, and entitled, "Findings and Policy". It is noteworthy that almost every item of recent legislation which attempts to cover territory hitherto considered not subject to occupation by Congress, begins on a similar note. It is hard to resist the opinion that such declarations have a slight taste of intellectual dishonesty about them, as though Congress, conscious of its limitations, had sought to secure constitutional validity by proclamations that there is grave need of action on its part.

This Declaration of Policy is, in substance, a somewhat extended syllogism, neatly unraveling itself to a final conclusion that congressional action is necessary in labor controversies, to insure protection to the movements of commerce.

The first proposition is advanced that employers and employees are at unequal levels with respect to bargaining powers. To place them on equal footing, the remedy is suggested that employees be permitted to organize and exercise their bargaining power through organizations, a form of economic concentration said to be available to employers. The next step in the syllogism is that, if employers do not recognize this right to organize, and if they do not bargain with employees on a collective basis, then strikes and industrial controversies are inevitable. At the same time, Congress believes, employees are handicapped in their efforts to secure an adequate return for their labor and are seriously impeded in demanding and negotiating improvements in working conditions.

The third premise declares that these conditions, if permitted to continue, will materially impair the movement of commerce among the several States by leading to strikes, lock-outs and decreased purchasing power. Finally, from these fateful antecedents, the conclusion is drawn that it is the policy of the United States to remove obstructions to commerce by assuring to employees the right to organize and bargain collectively.

The statute then puts its argument to work by defining the term, "affecting commerce", as

> "in commerce, or burdening or obstructing commerce, or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce, or the free flow of commerce."

In our analysis of the Act itself, we have pointed out that while the Act literally applies to almost all employers and employees, its enforcement is, nevertheless, confined to transactions "affecting commerce."

The right to organize and bargain collectively is confirmed in the most general terms, and all employers are instructed, without limitation, to refrain from interference and from certain defined unfair labor practices. The only employees excepted from the Act are farmhands, domestics and members of a family. Despite this generality, the Act is administered exclusively through the National Labor Relations Board, and the administrative agency theoretically should take no action unless the controversy or question "affects" commerce.

The petitioner contends, in effect, that this limitation saves the Act from the charge of invalidity, in that it confines its application to situations where there is, from an economic standpoint, an effect or potential effect on the movement of commerce. But the use of a word or phrase, however dramatic or effective, cannot alter settled conceptions of commerce, as the Constitution has fixed them. However sensitive to local activities interstate commerce may have become, that cannot alter the provinces of the State or Federal Governments one whit, nor *change that which is not interstate commerce into that which is.*

The National Labor Relations Board, in connection with the instant case, has used the congressional syllogism in "finding" that the respondent's transactions with its employees "affect" interstate commerce. As we have pointed out, its procedure in reaching this conclusion has been utterly arbitrary and capricious. The size of the respondent's plant, where the transactions occurred, its activities elsewhere, and the activities of affiliated corporations have been probed and the conclusion reached that the respondent's business is an enterprise of some magnitude. The labor history of steel industry, generally, and of other industries, beginning

with the turn of the Century, has been examined and the conclusion reached that strikes and labor disputes are bad for business. Like Congress, the Board has found itself faced with the task of piling premise upon premise and hypothesis upon hypothesis to reach the conclusion that the discharge of a few production employees at the respondent's Aliquippa Plant has a vital bearing upon the movement of interstate commerce. We submit that this tortuous line of reasoning does not and cannot save the constitutionality of the Act. *The ultimate fact remains that Congress has enacted a labor law and not a regulation of commerce,* and it does not help to sustain the pretext that there may be an indirect connection between the two. Decisions, which will be referred to under another section of this brief, are conclusive that this Court has never been satisfied to accept such a tenuous connection as the basis of congressional regulation.

In the last analysis, the argument of the petitioner impliedly admits the remoteness of the connection between the discharge of ten employees and the movement of interstate commerce, but seeks to justify the application of the statute because of the size and importance of the respondent's operations. So far as the effect on interstate commerce is concerned, there is, in reality, no difference between the respondent's Aliquippa Plant and a neighborhood grocery store; the cause and effect may be larger, but the causal connection is just as remote. In the words of the opinion in *Carter v. Carter Coal Company,* 298 U. S. 238 (1936),

> "the distinction between the direct and indirect effect turns, not upon the magnitude of either the cause or the effect, but entirely upon the manner in which the effect has been brought about."

The very phrase "affecting commerce" contains within itself an admission of indirectness, that here is something which is not in or a part of commerce, but which Congress would, for reasons of expediency, like to regulate.

B.

The National Labor Relations Act Can Have No Application to the Respondent's Relations With Its Production Employees.

Because of the decisions of this Court which recognize, to a limited extent, the power of the Federal government to prevent and forestall direct impediment to interstate commerce, the petitioner's argument, as we have indicated, has chosen the course of confining the application of the statute to a relatively few situations, with the hope of escaping the almost inevitable conclusion that the Labor Act is in reality a law designed to interfere with local labor relations, rather than a legitimate regulation of commerce. Even if we should accept the hypothesis that the limitation of the Act to transactions "affecting commerce" might save it from the taint of inherent invalidity, the petitioner is still without means to justify its application to the present case.

1.

THE FACT THAT THE RESPONDENT RECEIVES AND TRANSMITS RAW MATERIALS AND PRODUCTS IN INTERSTATE COMMERCE DOES NOT SUBJECT ITS INDUSTRIAL RELATIONS AND ACTIVITIES TO CONGRESSIONAL LEGISLATION.

It is admitted that raw materials are brought from several States to the respondent's plant at Aliquippa. We are equally ready to concede that a large percentage of its manufactured products, has found its way to States other than the State of Pennsylvania. But we cannot yield to the proposition that these factors suffice to subject the production activities of the respondent to the regulation of Congress.

The Employers Liability Cases (*Howard v. Illinois Central Railroad Co.; Brooks v. Southern Pacific Company*, 207 U. S. 463 (1908), were decided at a time when Congress had undertaken a policy of comprehensive regulation of interstate carriers. Nevertheless, the decisions came as a warning in unmistakable terms that the power to supervise interstate commerce did not imply the power to speak on every related subject, however tenuous the connection might be. The Court had before it the Federal Employers Liability Act of 1906. An analysis of the statute determined that its application was in terms extended to injuries sustained by employees of interstate carriers while engaged in activities not involving the movement of interstate commerce. As a result, the Court held that although the Act embraced subjects within the authority of Congress, it also applied to matters not within its constitutional powers, and that the two applications of the statute were so intermingled that they were not capable of separation. The statute, as a whole, was, therefore, declared invalid.

Proponents of the statute in that case argued vigorously that by engaging in interstate commerce, the carriers had subjected themselves to all manner of congressional regulation. Most significant, for present purposes, was the Court's reply, for in answer to this argument, it stated:

> "To state the proposition is to refute it. It assumes because one engages in interstate commerce, he thereby endows Congress with powers not delegated to it by the Constitution; in other words, with the right to legislate concerning matters of purely state concern. * * * It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution, *and would destroy the authority of the states as to all conceivable matters which, from the beginning, have been, and must continue to be, under their control so long as the Constitution endures.*" (Italics supplied) (pp. 502-503)

At the same term, provisions of the Erdman Act of 1898 were before the Court in *Adair v. United States*, 208 U. S. 161 (1908). One of the principal features of this legislation was its proscription of discrimination in the matter of employment against union members. The Court not only found that the statute was an illegal interference with the freedom of contractual relations between employer and employee, but also declared that it was not a proper vehicle of congressional action. Even although it applied to carriers and employees engaged in the interstate transportation of goods and passengers, the Court declared that the regulation itself was not a regulation of commerce, but constituted an effort on the part of Congress to affix its legislation to

a purely local thing, that is, the relation between the employer and employee. In this connection, the Court stated:

> *"But what possible legal or logical connection is there between an employee's membership in a labor organization and the carrying on of interstate commerce.* Such relation to a labor organization cannot have, in itself and in the eye of the law, any bearing upon the commerce with which the employee is connected by his labor and services." (Italics supplied) (p. 178)

See also *Railroad Retirement Board v. Alton Railroad Company, et al,* 295 U. S. 330 *supra; Hammer v. Dagenhart,* 247 U. S. 251 (1918).

2.

THE RESPONDENT'S RELATIONS AND TRANSACTIONS WITH ITS PRODUCTION EMPLOYEES ARE NOT IN OR CONNECTED WITH INTERSTATE COMMERCE.

As the statement of facts has indicated (*supra,* pages 2 to 18), the transactions which were investigated by the Board occurred in respondent's plant at Aliquippa, Pennsylvania, and involved relations between the respondent and employees formerly engaged in manufacturing operations at that plant. *This factor is the decisive point in the case.* The evidence received by the Board and its findings with respect to the respondent's other operations are entirely disconnected from the real issues of the case. In this connection, the principle which we stated at the outset of our argument bears repeating. *The power of Congress over interstate commerce is designed to allow Congress to protect commerce and to provide a uniform system of regulation of the movements of commerce, not to permit the jurisdic-*

tion of the States over local or domestic affairs to be whittled away by an extension of federal action.

The earlier decisions of the federal courts under the commerce clause do not show many instances where congressional legislation has been invalidated; until recent years, Congress made no effort to enact the far-flung legislation which has characterized its later attitude toward matters of domestic policy. As a result, most of the decisions are concerned with the power of the States to tax or regulate local subjects in situations where such taxes or regulations have at least an indirect effect on interstate commerce. Nevertheless these decisions, if analyzed, establish two parallel lines of authority, clearly demonstrating that local activities are not drawn into the current of interstate commerce merely because they are preceded and succeeded by an interstate movement.

Bacon v. Illinois, 227 U. S. 504 (1913);
Susquehanna Coal Co. v. South Amboy, 228 U. S. 665 (1913);
Packer Corporation v. Utah, 285 U. S. 105 (1932);
Nashville, etc., Ry. Co. v. Wallace, 288 U. S. 249 (1933);
Edelman v. Boeing Air Transport, Inc., 289 U. S. 249 (1933);
Minnesota v. Blasius, 290 U. S. 1 (1933);
Federal Compress, etc., Co. v. McLean, 291 U. S. 17 (1934);
Cornell v. Coyne, 192 U. S. 418 (1904);
Crescent Cotton Oil Co. v. Mississippi, 257 U. S. 129 (1921);
Heisler v. Thomas Colliery Co., 260 U. S. 245 (1922);
Oliver Iron Co. v. Lord, 262 U. S. 172 (1923);

Champlin Refining Co. v. Corporation Commission, 286 U. S. 210 (1932).

Inasmuch as these cases have reached substantially the same conclusions, based upon substantially identical arguments, it is unnecessary to subject them to close analysis. However, for the sake of emphasis, it may be desirable to single out a few unusual decisions defining the beginning of the interstate movement and its termination.

Arkadelphia Milling Co. v. St. Louis Southwestern Railways Co., 249 U. S. 134 (1918) arose out of actions by certain shippers and railway companies to enjoin the enforcement of intrastate railways rates fixed by a state railway commission. The facts indicated, in one of the cases, that the shipper was engaged in transporting logs from its lumber operation in the state to its mills, where the logs were processed and manufactured into staves and other products and held in storage, to be sold and shipped in accordance with the demands of the market. Almost 95% of the finished articles were eventually delivered to points outside of the state. The court found that the interstate movement did not begin until the sale and delivery of the finished products, declaring:

> "It is not merely that there was no continuous movement from the forest to the points without the State, but that when the rough material left the woods it was not intended that it should be transported out of the State, or elsewhere beyond the mill, until it had been subjected to a manufacturing process that materially changed its character, utility, and value." (p. 151)

Similarly in *Oliver Iron Co. v. Lord*, 262 U. S. 172 (1923), after declaring that mining "like manufacturing, is a local business," the Court added:

> "Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements, and persists even though the business be conducted in close connection with interstate commerce." (p. 178)

See also *Utah Light & Power Co. v. Pfost*, 286 U. S. 165 (1932); *Chassaniol v. City of Greenwood*, 291 U. S. 584 (1934).

The reverse situation may be seen in *Industrial Association v. United States*, 268 U. S. 64 (1925), in which the Court held that a conspiracy in restraint of trade was not designed to interfere with interstate commerce, even though it had an indirect effect on the movement of articles into the state because the conspirators applied their combination to goods which had come to rest within the state. In reaffirming the dividing line between local activities and interstate movement, the court declared:

> "It is true, however, that plaster, in large measure produced in other states and shipped into California, was on the list; but the evidence is that the permit requirement was confined to such plaster as previously had been brought into the state and commingled with the common mass of local property, and in respect of which, therefore, the interstate movement and the interstate commercial status had ended." (p. 78)

These two parallel groups of decisions naturally converge into a third line of authority, establishing the principle that local activities such as mining, manufacturing, warehousing, processing and the like are not withdrawn from the jurisdiction of the states because of subsequent or precedent movements in interstate commerce. The first of these decisions is *Kidd v. Pear-*

son, 128 U. S. 1 (1888). The argument was advanced that the state had transgressed beyond its proper jurisdiction in prohibiting the manufacture of intoxicants, because the statute restricted the movement of interstate commerce. In pointing out the fundamental distinction between local activities and commerce, the court declared:

> "No distinction is more popular to the common mind, or more clearly expressed in economic and political literature, than that between manufactures and commerce. Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different." (p. 20)

It is unnecessary to mention later decisions which have perpetuated the doctrine of *Kidd v. Pearson;* the rule of these cases offers powerful resistance to any extension of the interstate commerce jurisdiction of Congress under the guise of the "modern conception" of commerce to which we have adverted. A few of them are:

United Mine Workers v. Coronado Coal Company et al., 259 U. S. 344 (1922);
United Leather Workers v. Herkert & Meisel Trunk Co., 265 U. S. 457 (1924);
Delaware, Lackawanna & Western Railroad Co. v. Yurkonis, 238 U. S. 439 (1915);
Champlin Refining Co. v. Corporation Commission, etc., 286 U. S. 210 (1932).

Commerce has greatly expanded but there has been no real shift in emphasis from the local activities to the importation or exportation which precedes or follows them. All are essential parts of trade and business and it is both futile and absurd to speak of one as dominating the other. *The only fair conclusion that we can*

reach is that the allocation of power required by the constitution must be pursued while the constitution requires it. Where either state or federal jurisdiction attempts to use its power as a pretext to interfere with matters which are subject to the other, then the effort must be stricken down. For this reason, a state cannot use its taxing powers or its police powers to discriminate against interstate commerce, and by the same token, Congress cannot use its power over commerce to intrude into local policies.

The decisions which have been mentioned are, for the most part, concerned with state police and taxing measures, but that may be attributed to the fact that Congress has not until recently attempted to interfere in matters which do not concern it. Even so, these decisions are controlling because they in terms acknowledge the exclusive sovereignty of the states. For example, in *Kidd v. Pearson, supra,* the court rested its opinion upon the belief that, if the state law were stricken down, the jurisdiction of Congress would be greatly enlarged at the expense of the state.

This same argument was repeated in the opinion in *Heisler v. Thomas Colliery Co., et al.,* 260 U. S. 245 (1922), upholding a state taxing measure, where it is declared:

> "The reach and consequences of the contention repel its acceptance. If the possibility, or, indeed, certainty of exportation of a product or article from a State determines it to be in interstate commerce before the commencement of its movement from the State, it would seem to follow that is in such commerce from the instant of its growth or production, and in the case of coals, as they lie in the ground. The result would be curious. *It would nationalize all industries, it would nationalize and*

> *withdraw from state jurisdiction and deliver to federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts and the woolen industries of other States, at the very inception of their production or growth,* that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet 'on the hoof,' wool yet unshorn, and coal yet unmined, because they are in varying percentages destined for and surely to be exported to States other than those of their production." (Italics supplied). (p. 259)

It was this danger of the destruction of the powers of the States which seems to have evoked the following statement in the *Schechter* case:

> "But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of state power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people, and the authority of the state over its domestic concerns would exist only by sufferance of the federal government. *Indeed, on such a theory, even the development of the state's commercial facilities would be subject to federal control.*" (Italics supplied) (p. 546)

See also *United States v. Butler et al.*, 297 U. S. 1 (1936).

The distinction which we have emphasized between the local activities of a business and its subsequent or precedent participation in interstate commerce, has been maintained in the field of labor relations.

Hammer v. Dagenhart, 247 U. S. 251 (1918);
Howard v. Illinois Central Railway Co., 207 U. S. 463 (1908);
Industrial Accident Commission v. Davis, 259 U. S. 182 (1922).

Even assuming that participation by an employer in interstate commerce might subject certain of his activities to congressional regulation, nevertheless the relationship between the employer and his employees is purely a local matter. Although an employee may be employed in indirectly assisting the movement of interstate commerce, his relationship to his employer is not a part of commerce. It is a status existing wholly within the State, whose incidents, such as wages, hours of labor and the like are purely domestic in character. (See *Carter v. Carter Coal Company*, 298 U. S. 238). It may be true that congressional regulation of the local incidents of employment in cases involving interstate carriers has been sustained, where the Court has found the true object of Congress to be the protection of interstate commerce. But there is no precedent for interference where the real purpose of the regulation is deliberately to interfere in matters which are not the concern of the Federal Government. If the proposition should be accepted that the most insignificant participation in interstate commerce subjects all of the activities and all of the relationships of an employer to congressional measures, then there would be nothing to prevent congressional entry into the field of fire and building regulations, safety requirements, and a thousand similar measures, local in character. Yet no one would argue that regulations governing the erection and operation of factories, the hours and wages of employees, and the conditions of safe employment should be functions of the central government.

The labor provisions of the Bituminous Coal Conservation Act were almost identical with the provisions of the National Labor Relations Act. It, too, was prefaced with a legislative declaration of policy that the right of mine workers to organize and bargain collectively for wages, hours of labor and conditions of employment should be guaranteed in order to prevent constant wage cutting and disparage labor costs detrimental to fair interstate competition and in order to avoid obstructions to interstate commerce that occur in industrial disputes over labor relations at the mine. The Bituminous Coal Conservation Act likewise provided for the creation of a Labor Board to administer the labor provisions of the Code which was imposed by the statute on the producers of coal. Among the required provisions of the Code was a clause that "employes shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from interference, restraint or coercion of employers, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and no employe and no one seeking employment shall be required, as a condition of employment, to join any company union."

Other provisions assured the right of peaceable assemblage to workers and authorized the Labor Board to determine whether or not an organization of employes was controlled or dominated by an employer and to certify the freely chosen representatives of the employes. Additional labor provisions provided for the negotiation of agreements covering hours of labor and wages by the chosen representatives of the employers and employes.

The majority opinion in *Carter v. Coal Company, et al.*, 298 U. S. 238 (1936), gave careful consideration to these provisions and found the conclusion inescapable that labor relations are not in or a part of interstate commerce and therefore cannot be subject to regulation by Congress. In this connection, it was said:

> "One who produces or manufactures a commodity, subsequently sold and shipped by him in interstate commerce, whether such sale and shipment were originally intended or not, has engaged in two distinct and separate activities. So far as he produces or manufactures a commodity, his business is purely local. So far as he sells and ships, or contracts to sell and ship, the commodity to customers in another state, he engages in interstate commerce. In respect of the former, he is subject only to regulation by the state; in respect of the latter, to regulation only by the federal government. *Utah Power & L. Co. v. Pfost*, 286 U. S. 165, 182. Production is not commerce; but a step in preparation for commerce. *Chassaniol v. Greenwood*, 291 U. S. 584, 587.
>
> We have seen that the word 'commerce' is the equivalent of the phrase 'intercourse for the purposes of trade.' Plainly, the incidents leading up to and culminating in the mining of coal do not constitute such intercourse. *The employment of men, the fixing of their wages, hours of labor and working conditions, the bargaining in respect of these things—whether carried on separately or collectively—each and all constitute intercourse for the purposes of production, not of trade.* The latter is a thing apart from the relation of employer and employee, which in all producing occupations is purely local in character. Extraction of coal from the mine is the aim and the completed result of local

activities. Commerce in the coal mined is not brought into being by force of these activities, but by negotiations, agreements, and circumstances entirely apart from production. Mining brings the subject matter of commerce into existence. Commerce disposes of it.

A consideration of the foregoing, and of many cases which might be added to those already cited, renders inescapable the conclusion that the effect of the labor provisions of the act, including those in respect of minimum wages, wage agreements, collective bargaining, and the Labor Board and its powers, primarily falls upon production and not upon commerce; and confirms the further resulting conclusion that production is a purely local activity. It follows that none of these essential antecedents of production constitutes a transaction in or forms any part of interstate commerce. *Schechter Corp. v. United States, supra,* p. 542 *et seq.* Everything which moves in interstate commerce has had a local origin. Without local production somewhere, interstate commerce, as now carried on, would practically disappear. Nevertheless, the local character of mining, of manufacturing and of crop growing is a fact, and remains a fact, whatever may be done with the products." (Italics supplied) (pp. 303-304)

It could be said in support of the Coal Conservation Act it did seek to regulate other things as well as labor relations and that its labor provisions were merely designed to aid its price-fixing requirements, which, standing alone, might have been valid. The National Labor Relations Act has not even this virtue; it is purely a statutory plan for regulating labor relations. *In the light of the Carter case, can there be any doubt of its invalidity?*

The case of *Texas and New Orleans Railroad Co. v. Brotherhood of Railway and Steamship Clerks, et al.*, 281 U. S. 548 (1930), furnishes no precedent for the National Labor Relations Act. This case arose under the Railroad Labor Act of 1926, which set up machinery for the voluntary adjustment and arbitration of labor disputes before boards of adjustment and boards of arbitration. The plaintiff union had a controversy with the Railroad before a board of adjustment; pending the decision, the defendant railroad created a rival union, by indulging in alleged coercive and oppressive tactics. The union brought injunction proceedings under the section of the Act which declared that "representatives, for the purposes this Act, shall be designated by the respective parties * * * without interference, influence or coercion * * *." The District Court expressly held that the statute was constitutional and granted an injunction. The Circuit Court of Appeals affirmed the District Court, stating:

> "We think that under the power to regulate interstate commerce it is competent for Congress to make provision for the settlement of disputes between interstate carriers and their employees with reference to rates of wages, rules, and working conditions, to the end of preventing such disputes resulting in the interruption or stopping of the movement in interstate commerce of freight or passengers." (33 F. (2d) 13, 16).

This Court accepted the argument of the Circuit Court and sustained the Act as a regulation of commerce with the statement, "Congress may facilitate the amicable settlement of disputes which threaten the service of *the necessary agents of interstate transportation.*"

We submit that the distinction between the present case and that involved in the Texas & New Orleans Rail-

road Company case is implicit in the opinion of this Court. The transportation of persons and commodities between states is, of course, the very essence of interstate commerce. As a consequence, congressional regulation of rates, transportation facilities, equipment, personnel and related matters has been uniformly sustained. It would be indeed difficult to find a more comprehensive and thorough program of legislation than that developed in the Halls of Congress to govern the operations of carriers and communication systems. The breadth of this legislation is attributable to another cause as well. Railroads are classed as public service corporations which, by virtue of their public obligations, are required to continue operations if the government so directs. This power to compel continuity of operations necessarily implies a wide latitude to enact all manner of legislation to prevent interruptions and to increase the probabilities of continuous service. The Railway Labor Act of 1926 was merely a part of a general program. It was not a comprehensive labor statute, but a device to promote the amicable adjustment of disputes threatening the continuity of carrier operations. Accordingly, the admitted power of Congress to compel the carriers to operate would necessarily imply the right to enact such legislation.

And even this power has its limitations. The majority opinion in *Railroad Retirement Board v. The Alton Railroad Co., et al.*, 295 U. S. 330, *supra*, is an indication that Congress cannot, under the pretext of regulating commerce, enact legislation designed to foster "a contented mind on the part of an employee," and that the decision in the *Texas & New Orleans Railroad Company* case is not a controlling precedent here. It was said:

> "The Railway Labor Act was upheld by this court upon the express ground that to facilitate the

amicable settlement of disputes which threatened the service of the necessary agencies of interstate transportation tended to prevent interruptions of service and was therefore within the delegated power of regulation." (p. 369)

8.

DECISIONS INVOLVING CONGRESSIONAL REGULATION OF THE SO-CALLED "STREAM OF COMMERCE" ARE INAPPLICABLE IN THE PRESENT CASE.

The decision, of the National Labor Relations Board endeavored to find that the respondent's Aliquippa Plant is merely a way station in the transit of commerce, with the thought of justifying the application of the Act to local transactions, because they are merely eddies in the stream of commerce. The facts which we have stated have indicated that the respondent's operations are not merely trifling interruptions of the movement of commerce. Its plant at Aliquippa is extensive in size and represents a very substantial investment in buildings, machinery and equipment. The raw materials which come to the respondent from the State of Pennsylvania and elsewhere are delayed for a long period of time and, after being subjected to the manufacturing processes of the respondent, are changed substantially as to character, utility and value. The finished products which emerge are to a large extent manufactured without reference to pre-existing orders and contracts and are entirely different from the raw materials which enter at the other end. If importation and exportation in interstate commerce do not singly transfer purely local activities into the field of Congressional regulation, it should follow that their combination would not alter the local situation.

The origin of the conception of a stream of commerce may be traced to the case of *Swift & Co. v. United States*, 196 U. S. 375 (1905), which involved an action by the United States under the Sherman Act to restrain a conspiracy in restraint of trade. It appeared that a conspiracy existed among six large meat packing houses and was accomplished through a combination among dealers and commission men in the stockyards to refrain from bidding against each other. The defendants argued strenuously that all of their activities took place within the confines of a single state. The Court nevertheless took a broader view of the facts and concluded that the object of the conspiracy was to monopolize and impede the movement of interstate commerce from the stock farms in the West to the ultimate consumer in various states. There was no need to refer to any other factor than that defendants had deliberately designed to obstruct the movement of commerce, but the Court nevertheless made the statement that:

> "When cattle are sent for sale from a place in one state, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stockyards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce." (pp. 398-399)

Subsequently in two decisions, *Stafford v. Wallace*, 258 U. S. 495 (1922), and *Chicago Board of Trade v. Olsen*, 262 U. S. 1 (1923), the same conception was applied to sustain Congressional regulation of certain local activities. The *Stafford* case involved the Stockyards and Packers Act. Congress, after a series of elaborate investigations, had found that the large packing houses

had taken advantage of their control over the stockyards and connected facilities to control the prices of cattle. The stockyards were, of course, centers located in the larger cities where cattle in transit from western states were temporarily detained, watered and fed and sometimes slaughtered. Most of the sales from producers to dealers and packers took place while the cattle were in the yards, being handled through commission agents. The statute enacted by Congress provided comprehensive regulation of the yards, connected facilities, the fees and activities of commission men and dealers and similar subjects. Although the act applied in terms to local activities, the Court found that these activities were so closely connected with the general current of commerce that they were subject to Congressional regulation.

The *Olsen* case involved the Grain Futures Act, which provided for direct regulation of the practices of grain exchanges and their members, the primary object being to control dealings in grain futures. Similar Congressional regulation in the Future Trading Act, through the device of a prohibitory tax, had been invalidated in *Hill v. Wallace*, 259 U. S. 44 (1922). The second plan of Congress to regulate future trading followed after a series of investigations into abuses in future trading had led to the conclusion that such trading, unless subjected to regulation, could have disastrous effects upon commerce in grains. In the *Olsen* case, the Grain Futures Act was sustained, although the activities of grain exchanges and their members were purely local in character, because these activities, unless regulated, constituted a very serious threat to the current of interstate commerce in grains and because the exchanges were in the nature of public utilities. Cf. *Tagg Bros. & Moorehead v. United States*, 280 U. S. 420 (1930); *Tyson & Bro. v. Banton*, 273 U. S. 418 (1927).

Advocates of the legality of the National Labor Relations Act attribute more force to this conception of a stream of commerce than the decisions establishing it warrant. It was useful in conspiracy cases because it obviates the necessity of proving a direct restraint upon an actual train of interstate commerce. In the *Olsen* and *Stafford* cases, it served a somewhat different purpose. Both cases dealt with peculiar situations; they involved focal points, through which the stream of commerce swept on its way from producer to the ultimate consumer. A stockyard is an institution which assembles live stock from various portions of the country, arranges for its temporary storage and then sends it on its way, after the shift of ownership has been made from the producer to the packer or dealer. The grain exchange which was involved in the *Olsen* case, performs a similar function for grains. Grains are, for the most part, warehoused in transit, where the grain exchange is located, and the exchange serves as a market place for shifting title and arranging the final destination of the produce. In other words, both stockyards and exchanges are instrumentalities of commerce, in much the same way as the actual carriers of commodities. This factor was emphasized in both the *Olsen* case and the *Stafford* case. Thus, in the *Stafford* case, we find the statement:

> "The stockyards are but a throat through which the current flows, and the transactions which occur therein are only incident to this current from the West to the East, and from one state to another. Such transactions cannot be separated from the movement to which they contribute and necessarily take on its character." (p. 516)

Similar language appears in the *Olsen* case, in the declaration that:

> "The sales on the Chicago Board of Trade are

> just as indispensable to the continuity of the flow of wheat from the West to the mills and distributing points of the East and Europe, as are the Chicago sales of cattle to the flow of stock toward the feeding places and slaughter and packing houses of the East." (p. 36)

It would be impossible to extend the language of the decisions beyond their immediate facts, without entirely obliterating the distinction between that which is interstate commerce and that which is not. From a speculative viewpoint, almost every business participates, to a limited extent, at least, in the general current of commerce. This participation is merely magnified in those idustries which import and export materials before and after their manufacturing or other operations. But such industries are not instrumentalities of commerce in the same sense as stockyards or grain exchanges and to hold that they are would be to overemphasize the current of commerce at the expense of local authority. It is, therefore, reasonable to believe, from a careful consideration of both the *Olsen* and *Stafford* decisions and from a realization of the lengths to which the conception would otherwise be driven, that the doctrine is to be confined to instrumentalities of the broad movement of interstate commerce and not to be tortured into application to local activities which have merely a remote bearing on interstate trade. Consequently, we find that the decision in *Arkadelphia Milling Co. v. St. Louis Southwestern Railways Co.*, 249 U. S. 134 (1919), which came long after the Swift case, expressly declared that the conception of a "stream of commerce" did not change the character of local manufacturing operations.

There is another distinguishing factor involved in the cases which we have just seen. Not only are the

stockyards and grain exchanges, in practical effect, instrumentalities of interstate commerce, but in both instances, Congress had enacted comprehensive regulations to prevent the continuance of constantly recurring practices which had and were designed to have direct and immediate effects on interstate commerce. The distinction which we have emphasized throughout comes to the fore again, to set these exceptional decisions apart in their true light. The Court perceived the intimate connection between the local activities involved and the broad movement of interstate commerce and it recognized that the primary object of Congress was to protect the interstate movement of grains and cattle against direct restraints and interferences. But that is no precedent for arguing that this Court should sustain Congressional regulation of remote local activities where the true object of the statute is to regulate such activities and not to assist the movement of commerce.

Thus in the majority opinion in *Carter v. Carter Coal Company* 298 U. S. 238, it was said:

> "It was nowhere suggested in these cases that the interstate commerce power extended to the growth or production of the things which, after production, entered the flow. If the court had held that the raising of the cattle, which were involved in the Swift case, including the wages paid to and working conditions of the herders and others employed in the business, could be regulated by Congress, that decision and decisions holding similarly would be in point; for it is that situation, and not the one with which the court actually dealt, which here concerns us." (pp. 305-306)

The constantly recurring evils to which the petitioner refers in its endeavors to draw the present issues into the purview of the Stafford and Olsen cases are not

clearly defined in the petitioner's brief. If it is speaking of strikes and lockouts, which actually result in a stoppage of shipments or of raw materials, then its argument relates to conditions which are not existent in the present case. If it is speaking of the respondent's relations with the complaining employees, then its argument is equally unconvincing because these are matters traditionally too remote from the stream of commerce to admit of federal intervention, unlike the activities in the Grain Exchange and Stock Yard cases, which were in the very current of commerce, and a part of the instrumentality of commerce which Congress had sought to regulate. The difference between the two situations is as great as the difference between the regulation of safety appliances on interstate carriers, which is obviously a fit subject for Congressional action and the regulation of safety conditions in manufacturing plants, which is not.

4.

THE CONNECTION BETWEEN THE RESPONDENT'S RELATIONS WITH ITS EMPLOYEES AND THE MOVEMENT OF INTERSTATE COMMERCE IS INDIRECT AND REMOTE AND DOES NOT JUSTIFY THE APPLICATION OF THE NATIONAL LABOR RELATIONS ACT TO THE ISSUES OF THE PRESENT CASE.

An examination of the decisions which sustain Congressional regulation of local activities where they have exerted a direct inhibitory effect on the movement of interstate commerce will find them grouped in two principal categories: (1) cases involving conspiracies to restrain commerce under the Anti Trust Laws, and (2) cases involving the regulation of stockyards and grain exchanges (which have been briefly discussed under the preceding section of this brief). Although the one group

of cases involves the power to punish restraints after they have occurred, and the other the power to forestall them, both rest upon the same foundation, that is, the intimate, direct connection between the subject of Congressional action and the movement of commerce, a connection which no amount of rhetoric can supply in the present case.

The petitioner counts heavily upon the decisions of this Court which have upheld the application of the Anti Trust Laws to industrial conspiracies, such as strikes and lockouts, notably *Coronado Coal Company v. United Mine Workers*, 268 U. S. 295 (1925); *Bedford Cut Stone Co. v. Stonecutter's Association*, 274 U. S. 37 (1927); *Duplex Printing Co. v. Deering*, 254 U. S. 443 (1921-; and *Loewe v. Lawlor*, 208 U. S. 274 (1908). From these decisions the petitioner induces a double-edged principle, viz., that Congress may deal with labor disputes, either punitively or prospectively, (1) where there is a direct intention to restrain interstate commerce and (2) where such restraint is the necessary and direct result of the activity which is being subjected to control. The petitioner's argument is, in substance, that the issues of the present case fit the formulae of these decisions in both respects because there is (1) an implied intent to restrain interstate commerce and (2) a direct and necessary burden upon interstate commerce.

The industrial conspiracy cases, the petitioner argues, could not have depended upon the existence of an actual intent to restrain interstate commerce, because the state of mind of the participants could not add to nor subtract from the power of Congress. Yet strangely enough, the element of intention *was* a most important factor in these cases because they involved nothing more nor less than the application of a penal statute which required an actual plan to restrain inter-

state commerce in order to have a punishable offense. This is very clear from the *Coronado* case, for, on the occasion of its first appearance in this Court, (*United Mine Workers v. Coronado Coal Co., et al.*, 259 U. S. 344 (1922)) the record showed merely a persistent and unlawful interference with the production of the plaintiff's coal mines by members of the defendant unions. Since the record was barren of any evidence of an intention to restrain the movement of commerce, the Court said that interference with production, regardless of its ultimate effect on interstate commerce, would not alone suffice to constitute a violation of the Sherman Act. As a result, the case was remanded with the statement that

> "Coal mining is not interstate commerce, and the power of Congress does not extend to its regulation as such. In *Hammer v. Dagenhart*, 247 U. S. 251, 272, we said: 'The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce, make their production a part thereof. *Delaware, Lackawanna & Western R. R. Co. v. Yurkonis*, 238 U. S. 439.' Obstruction to coal mining is not a direct obstruction to interstate commerce in coal, although it, of course, may affect it by reducing the amount of coal to be carried in that commerce." (pp. 407-408)

At the second trial, there was both direct and inferential evidence of a plan to check the movement of coal into other states. The direct evidence indicated that the striking unions had planned to prevent the coal from competing with the product of union mines in other states, while the inferential proof consisted of evidence that the strikers' activities had in fact seriously restrained the interstate movement of coal [See *Coronado Coal Company v. United Mine Workers*, 268 U. S. 295,

308, 310, (1925)]. On the basis of the new evidence, this Court found that the transactions were within the prohibition of the Sherman Act as a conspiracy with intent to restrain interstate commerce. The petitioner is clearly in error in arguing that the *Coronado* cases stand for the proposition that the likelihood of impeding the movement of commerce will of itself satisfy the statutory requirement of intent. Of course, the intent of the conspirators to restrain commerce may be inferred from its actual stoppage on the theory that the conspirators must have intended the reasonable consequences of their acts, but this does not mean that there is no distinction between a deliberate interference with commerce (which is obviously direct) and an act which *might* lead to a disturbance of the stream, (which is, of its very nature, indirect).

A comparison of the second *Coronado* case, *supra*, with the decision in *United Leather Workers v. Herkert and Meisel Trunk Co.*, 265 U. S. 457 (1924) points this distinction in striking fashion. In the latter case, it was shown that the strike seriously impaired the complainant's operations and thereby diminished its purchases of raw materials from other states, as well as its shipment of finished articles across state lines. However, since there was no evidence that the conspirators had directly interfered with or intended to interfere with interstate movements in either raw materials or finished products, it was held that the effect on interstate commerce was too remote to warrant punishment under the Sherman Act. See also *Industrial Association v. United States*, 268 U. S. 64 (1925).

The efforts of the petitioner to fit the present case into the pattern of the conspiracy cases, by fabricating an intent to restrain interstate traffic, are unconvincing. Conceivably, if there were a strike at the respondent's

plants or a strike in the Steel Industry generally, the strikers might plan or intend to check the movements of materials to and from the respondent's plant or in the industry as a whole. But clearly, the respondent could not be held responsible for the *voluntary* intervening acts of outside agencies. The possibility of an *intentional* restraint by strangers would, if anything, weaken the connection between the transactions in issue and the movement of commerce rather than strengthen it. The suggestion that the respondent might be charged with an implied intent to destroy or diminish the movement of interstate trade, if a labor dispute should occur, which might lead to a strike, is almost ludicrous. The respondent's sales offices in twenty cities, of which the petitioner makes so much capital in its brief, should provide the answer to this supposition.

In reality, the conspiracy decisions, instead of aiding the petitioner, have thrown it out of court. Although cases such as *United Mine Workers v. Coronado Coal Company, et al.*, 259 U. S. 344 (1932) and *Local 167, etc., v. United States*, 291 U. S. 293 (1934) are primarily concerned with the application of the Anti Trust Laws to particular situations, rather than with their constitutional scope, they do provide a definite line of demarcation between direct and indirect effects which is fatal to the petitioner's contentions. It is not true, as the petitioner's brief assumes, that if Congress can punish a concerted plan to interrupt or restrain interstate trade, it must therefore have unlimited means to anticipate every situation which *might* develop into a punishable restraint. Would petitioner contend that because the Federal government may move against striking unions for restraining commerce in violation of the Sherman Act, Congress would therefore have the power

to prevent a laborer from joining an organization on the theory that he might some day participate in an illicit conspiracy?

There is a definite limitation which inheres in the very language of the commerce clause, and that is, that the "preventive" legislation, as the petitioner terms it, *must be confined to the legitimate regulation of commerce.* Congress can prevent, just as it can punish, direct restraint, but it cannot move in on purely local activities because they might conceivably affect the current of interstate trade.

The definition which the National Labor Relations Act gives of the term "affecting commerce" demonstrates the inapplicability of the Anti-Trust decisions to the present cases. The statutory definition does not stop with labor practices which "obstruct commerce"; it goes on to those which "have led or tend to lead" to labor disputes which burden commerce. [Compare the similar use of the phrase "affecting commerce" in *A. L. A. Schechter Corp. v. United States,* 295 U. S. 495 (1935)]. It is this tenuous connection which the petitioner relies upon in the present case and which the conspiracy decisions declare, by implication, to be beyond the legislative reach of Congress.

There is no better way of illustrating this deficiency in the petitioner's argument than by a comparison of *Local 167, etc., v. United States,* 291 U. S. 293 (1934), a conspiracy case, with the decision of this Court in the *Schechter* case. The former involved an exercise of the control power (to adopt petitioner's terminology) in that it concerned a conspiracy among the poultry market men, drivers and shochtim in the New York area to injure the business of dealers in poultry in the locality.

Although the conspiracy was effectuated by means of purely local activities, it was considered subject to punishment as a restraint upon interstate trade, because it directly impeded the importation of poultry into New York. In the *Schechter* case, the preventive power of Congress was involved but the factual situation was almost identical. The Government endeavored to support the application of a federal Code of Fair Competition to wages, hours of labor and trade practices among the poultry dealers in New York City, on the theory that the regulation was necessary to lift restraints on the movement of commerce into the area. The fantastic succession of possibilities which the Government desired to use in the *Schechter* case as a substitute for the direct, immediate connection of the conspiracy cases was not acceptable, and this Court pointed out the distinction with the statement:

> "This is not a prosecution for a conspiracy to restrain or monopolize interstate commerce in violation of the Anti-Trust Act. Defendants have been convicted, not upon direct charges of injury to interstate commerce or of interference with persons engaged in that commerce, but of violations of certain provisions of the Live Poultry Code and of conspiracy to commit these violations. Interstate commerce is brought in only upon the charge that violations of these provisions—as to hours and wages of employees and local sales—'affected' interstate commerce." • • •
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> "Where a combination or conspiracy is formed, with the intent to restrain interstate commerce or to monopolize any part of it, the violation of the statute is clear. *Coronado Coal Co. v. United Mine Workers,* 268 U. S. 295, 310. But, where that intent is absent, and the objectives are limited to intrastate activities, *the fact that there may be an indirect*

effect upon interstate commerce does not subject the parties to the federal statute, notwithstanding its broad provisions. This principle has frequently been applied in litigation growing out of labor disputes."

* * * * * * *

"While these decisions related to the application of the federal statute, and not to its constitutional validity, *the distinction between direct and indirect effects of intrastate transactions upon interstate commerce must be recognized as a fundamental one, essential to the maintenance of our constitutional system.* Otherwise, as we have said, there would be virtually no limit to the federal power, and for all practical purposes we should have a completely centralized government." (Italics supplied) (pp. 545-548)

Similarly, in *Industrial Association v. United States,* 268 U. S. 64 (1925), the Court was careful to point out the distinction between a deliberate, direct interference with interstate commerce and a remote, fortuitous reaction resulting from purely local difficulties, in the statement that

"The alleged conspiracy and the acts here complained of, spent their intended and direct force upon a local situation—for building is as essentially local as mining, manufacturing or growing crops—and if, by a resulting diminution of the commercial demand, interstate trade was curtailed either generally or in specific instances that was a fortuitous consequence so remote and indirect as plainly to cause it to fall outside the reach of the Sherman Act. (Comp. St. 8820 *et seq.*)" (p. 82)

Stafford v. Wallace, 258 U. S. 495 (1922) and *Chicago Board of Trade v. Olsen*, 262 U. S. 1 (1923) are equally unavailable to the petitioner on this point, for they too serve to emphasize the distinction between indirect and direct effects, as we have indicated under the preceding section. (See pages 78 to 83, *supra*.)

We have mentioned the implied admission of indirectness in the statutory definition of "affecting commerce", in that it applies not only to practices *burdening* commerce, but also to those which *might* tend to lead to labor disputes which *might* burden the movement of interstate trade. The same indirectness is woven into the fabric of the petitioner's argument, as it was in the *Schechter* case (the term used there was "affecting commerce"), but it is artfully concealed in almost every paragraph of its brief. Again and again the petitioner harkens to the fact that strikes frequently have an adverse effect on the movement of commerce to and from the affected establishment and this hypothetical connection is pleaded as a sufficient justification for the application of the statute to the facts of this case. If this were a proceeding against striking employees under the Anti-Trust Laws, the connection between strikes and stoppages of commerce might be legitimately urged as a reason for inferring an intent to restrain the movement of commerce. But here there is no actual or threatened strike such as the petitioner supposes to exist. Despite the petitioner's efforts to magnify the facts of this case into a national crisis, the controversy remains a simple issue between an employer and ten employees over the propriety of disciplinary acts of the respondent's agents. The fact that the dis-

charges *might* have led to dissatisfaction, which *might* have led to a dispute of more serious consequences, which *might* have resulted in a walk-out, which *might* have led to an interruption or switch in the movement of interstate commerce, does not satisfy the constitutional requirement of a direct and immediate connection. Not only are there several steps in the relation between the issues of this case and the movement of commerce, but each step is built upon the quicksand of a doubtful possibility. Similarly, the sections of the National Labor Relations Act, under which the petitioner proceeded in this particular case, are not concerned with strikes or with boycotts, but with the relationship between this employer and the complaining employees. They look merely to the enforced return of the complainants to the respondent's payroll, with back pay, and not to the relief of the stricken channels of commerce.

The petitioner is evidently disturbed by the tenuous character of the succession of possibilities upon which it has relied to support its findings of fact, because it argues that the connection between the discharge of employees and the stoppage of interstate commerce has been established for it by the declaration of Congress. We submit that the involved trail of reasoning which Congress itself has followed in order to link labor disputes with the movement of trade, as it appears in the Declaration of Policy which prefaces the Act, is a convincing demonstration of the remoteness of the connection. The extended syllogism indicates that Congress has indeed recognized its remoteness and has hoped to draw it closer by an elaborate outline of its premises. A similar declaration of policy was made in

the Grain Futures Act, which was upheld in *Chicago Board of Trade v. Olsen*, 262 U. S. 1 (1923), but the connection there was much closer. Congress had undertaken elaborate investigations and had found that the movement of grain was so sensitive to dealings in grain futures that it was a comparatively simple matter, through such dealings, to control supply and demand and therefore prices. There was only one step in that argument. Future trading had been used to produce shortages and abundances of grain, the object being to profit by manipulated prices. Because of the long study which Congress had devoted to the problem, its finding of an intimate connection was accepted. But even there, as a careful study of the opinion will reveal, this Court reviewed in great detail the evidence which was placed before Congress and concurred in the findings that Congress had made. The decision is not an authority for the proposition that a declaration by Congress of the need of regulation will automatically justify its action.

This is well illustrated by *Carter v. Carter Coal Company, supra.* The issues in that case were almost identical with those of the present case. The Bituminous Coal Conservation Act, like the Labor Act, was prefaced with a declaration of congressional policy that the labor provisions of the Act were essential to prevent labor disputes at the mines and therefore to forestall interruptions of the movement of Interstate commerce. As if in confirmation of the congressional finding, the Trial Court in that case, like the Labor Board in this case, found that the production of coal was vital to the public welfare and to the industries and economic life of the Nation; that its distribution in interstate commerce should be regular, continuous and free of interruptions; that the predominant portion of the coal produced was shipped in interstate commerce and that the existence of a condition of unrestrained

and disturbed competition had burdened and restrained interstate commerce. These findings of Congress and of the lower Court *were legally insufficient to justify the labor provisions of the Act.* The majority opinion declared:

> "That the production of every commodity intended for interstate sale and transportation has some effect upon interstate commerce may be, if it has not already been, freely granted; and we are brought to the final and decisive inquiry, whether here that effect is direct, as the 'preamble' recites, or indirect. The distinction is not formal, but substantial in the highest degree, as we pointed out in the *Schechter* case, *supra*, p. 546, *et seq.* * * *
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> * * * *The distinction between a direct and an indirect effect turns, not upon the magnitude of either the cause or the effect, but entirely upon the manner in which the effect has been brought about.* If the production by one man of a single ton of coal intended for interstate sale and shipment, and actually so sold and shipped, affects interstate commerce indirectly, the effect does not become direct by multiplying the tonnage, or increasing the number of men employed, or adding to the expense or complexities of the business, or by all combined.
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> * * * * * *
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> *Much stress is put upon the evils which come from the struggle between employers and employees over the matter of wages, working conditions, the right of collective bargaining, etc., and the resulting strikes, curtailment and irregularity of production and effect on prices; and it is insisted that interstate commerce is greatly affected thereby. But, in addition to what has just been said, the conclusive answer is that evils are all local evils over which the federal government has no legislative*

control. The relations of employer and employee is a local relation. At common law, it is one of the domestic relations. The wages are paid for the doing of local work. Working conditions are obviously local conditions. The employees are not engaged in or about commerce, but exclusively in producing a commodity. And the controversies and evils, which it is the object of the act to regulate and minimize, are local controversies and evils, affecting local work undertaken to accomplish that local result. *Such effect as they may have upon commerce, however extensive it may be, is secondary and indirect.* An increase in the greatness of the effect adds to its importance. It does not alter its character. * * *" (Italics supplied) (pp. 307, 308)

The petitioner has sought to escape the implications of the decision by the argument that here the respondent's operations are *both* preceded *and* succeeded by a movement in commerce. Such a distinction is transparently technical. The substance of the *Carter* case is that labor relations are intrinsically local in character; their bearing on the movement of commerce is *essentially and legally* indirect. This is borne out by the decision in *Arkadelphia Milling Co. v. St. Louis S. W. Ry. Co.*, 249 U. S. 134, *supra*, where it was declared that the conception of a "stream of commerce" did not change the character of local manufacturing operations, even where they were in mid-stream.

The petitioner's argument seeks to convince this Court that *Carter v Carter Coal Company, supra*, is inapposite because it was primarily concerned with the wage- and hour-fixing provisions of the Bituminous Coal Conservation Act. Our analysis of the labor provisions of that statute has indicated that they were in many

respects identical with the provisions of the National Labor Relations Act. Prohibitions against support of a labor organization by an employer and against requiring an employee to join a so-called company union are common to both Acts. Although the terminology is different, both statutes confirmed the right of collective bargaining and authorized an administrative agency to select or certify the exclusive representatives of the employees. As a matter of fact, the Coal Act did not purport to fix either wages or hours of labor except *through the medium of collective bargaining,* for it provided that wages and hours should be determined by collective agreements between the representatives of the producers and the representatives of a majority of the workers. Although this feature of the Coal Act was condemned as an arbitrary delegation of power, the principal reason for invalidating the statute was that *labor relations and matters of collective bargaining are within the jurisdiction of the States and not of Congress.* This is clear from the language which we have quoted from the majority opinion in the *Carter* case. The argument was made in support of the Coal Act that it was designed to eliminate *"the evils which come from the struggle between employers and employees over the matter of wages, working conditions, the right of collective bargaining, etc., and the resulting strikes, curtailment and irregularity of production and effect on prices* * * *."* The conclusive answer was that these evils were "local evils, over which the Federal Government has no legislative control. *The relation of employer and employees is a local relation."*

This Court has said, again and again, that if the bars be let down to labor legislation under the guise of a regulation of commerce, there is an end to the sovereignty of the states as defined by the constitution.

THE CENTRAL GOVERNMENT IS ONE OF SPECIFIED POWERS, WHICH CAN BE ENLARGED ONLY BY THE WILL OF THE PEOPLE AND NOT BY THE USURPATION OF CONGRESS OR THE SELF-SERVING FINDINGS OF AN ADMINISTRATIVE AGENCY.

Of course a finding of Congress is entitled to some weight but it is difficult to believe that the Court will accept it as controlling, if it runs counter to the many decisions that local activities are not commerce, although succeeded or preceded by a movement in commerce, and that industrial relations have no such connection with interstate commerce as would bestow upon Congress the power to govern them. (Cf. *St. Joseph Stockyards v. United States*, 298 U. S. 38 (1936), *supra*).

The same distorted path of argument was employed by Congress to justify the Agricultural Adjustment Act. This Court was urged to find that the decrease in farm prices, incident to the depression, had seriously affected the national income and therefore the general welfare. In other words, it was contended that farming had become a national problem, just as it is contended in the instant case, that the respondent's relations with its employees have been converted into a matter of national concern because of the size of the respondent's operations and the magnitude of the steel industry in general. The tremendous mass of data and opinion received in evidence by the Board to show the past history of the steel industry, and its industrial relations had this object in view; to convince this Court that the need of organization in the steel industry is a matter of national importance. The majority opinion in *United States v. Butler, et al.*, 297 U. S. 1 (1936), makes short shrift of this argument in the simple statement that:

> *"It does not help to declare that local conditions throughout the nation have created a situation of national concern;* for this is but to say that when-

ever there is a widespread similarity of local conditions, Congress may ignore constitutional limitations upon its own powers and usurp those reserved to the states." (pp. 74-75)

We believe we may justifiably conclude that the Court will recognize that Congress cannot use the conception that transactions "affecting commerce" are subject to its authority as a pretext to interfere in matters which are not a part of interstate commerce; that it will confine the doctrine of the grain exchange and stockyards cases to transactions which are intimately connected with the movement of commerce, or directly obstruct and impede it; and that it will not justify, as a regulation of commerce, a statute *which piles speculation upon speculation to attain its ends.* There is no better way to demonstrate our conclusions than by a reference to the opinion of Chief Justice Hughes in the *Schechter* case:

> "The argument of the government proves too much. If the federal government may determine the wages and hours of employees in the internal commerce of a state, because of their relation to cost and prices and their indirect effect upon interstate commerce, it would seem that a similar control might be exerted over other elements of cost, also affecting prices, such as the number of employees, rents, advertising, methods of doing business, etc. All the processes of production and distribution that enter into cost could likewise be controlled. If the cost of doing an intrastate business is in itself the permitted object of federal control, the extent of the regulation of cost would be a question of discretion and not of power." (p. 549)

POINT III.

The Procedural Provisions of the National Labor Relations Act Are Invalid, in That They Violate Section 2 of Article III of the Constitution and the Seventh Amendment to the Constitution.

Although it may be asserted that the petitioner is merely a fact-finding administrative agency, an examination of its functions will indicate that in the present case, at least, it has assumed judicial powers and purported to exercise jurisdiction over a controversy which is normally subject to the powers of the constitional courts.

Under Section 10 (b) of the Act, the petitioner is empowered to hear and determine charges that an employer has engaged in unfair labor practices, including complaints filed by employees based upon charges of discrimination. Under Section 10 (a) the power of the Board to prevent unfair labor practices is made *exclusive* and under Section 10 (c), in controversies between employee and employer over discriminatory discharges and demotions, the petitioner is authorized, after hearing, to render affirmative relief, by requiring the employer to reinstate the complaining employee, with or without compensation for loss of wages. In this respect, the petitioner is given exclusive jurisdiction over private quarrels between employees and their employer and it has, in fact, assumed such jurisdiction in the instant case.

The procedure ordained by the Act, in controversies like the present, requires that a hearing shall be held and evidence received, following which the petitioner is given authority to make findings of fact and to issue affirmative as well as negative orders. The provisions for review appear in Sections 10 (e) and 10 (f), the

former permitting the Board to apply to the Circuit Courts of Appeal for the enforcement of its orders (and, in exceptional cases, to the District Courts), and the latter providing for similar review by the Circuit Courts of Appeal at the instance of parties aggrieved by the Board's orders. In either case, the jurisdiction of the Court in which the petition is filed is made exclusive and the decision of the reviewing Court is made on the basis of *the record before the Board,* the findings of the Board on the facts being made conclusive, if supported by evidence. Only those objections which have been urged before the Board are available in the reviewing court. From this summary, it is apparent that the Board is vested with *exclusive original* jurisdiction of complaints against an employer, the appeal to the reviewing court being in all respects similar to an appeal from a constitutional court and subject to the same limitations as to the scope of the review.

The procedure which the statute prescribes was followed with particularity in the present case. Written charges were made by the thirteen complaining employees, in which it was alleged that they had been wrongfully discharged or demoted by the respondent. The petitioner assumed jurisdiction of the controversy and issued a complaint, calling upon the respondent to file a written answer, meeting the allegations of the Board's pleading. An answer was filed and the Board proceeded to hear and determine the facts with respect to the controversy between the complaining employees and the respondent. Its decision found that ten of the complainants had been wrongfully discharged and directed the respondent to reemploy them, with full compensation for lost pay. The petitioner then applied to the Circuit Court of Appeals for an order enforcing its decision and the Circuit Court heard and dismissed the Board's petition upon the basis of the written transcript

of the record which had been certified to the Circuit Court.

The Seventh Amendment to the Constitution assures the right to trial by jury "in suits at common law, where the value in controversy shall exceed $20.00. * * *" Although it may be suggested that the Labor Act transcends the common law in requiring the restoration of employees discharged for union activities, an action for wages after wrongful discharge is clearly the function of common law courts. In this case, the petitioner has usurped this function by directing the payment of wages to the complaining employees, thereby entering against the respondent an order which is, in all respects, the equivalent of a money judgment. It may be urged that this is permissible under the decision in *Texas & New Orleans Railroad Company v. Brotherhood of Railway & Steamship Clerks*, 281 U. S. 548 (1930), which is discussed in detail in another point in this brief, but it is to be observed that that decision did not involve statutory procedure, as in the present case, but was concerned solely with the power of a court to protect its injunctive processes by requiring the defendant to purge itself of contempt of the decree through the restoration of the *status quo*.

The petitioner has endeavored to evade the requirements of the Seventh Amendment by comparing the present controversy to a suit in equity. In its brief in the Associated Press case (No. 365), it is argued that the restoration of lost pay is merely "an incident of the equitable remedy for the prevention of unfair labor practices", and a comparison is drawn between the present proceedings and other equitable actions. A similar construction is placed upon the statute in the dissenting opinion of Judge Garrecht, in *National Labor Relations Board v. Mackay Radio & Telegraph Co.* (C.

C. A. 9th, decided January 11, 1937), in which it is said that "this is a proceeding in equity and the primary relief sought is the reinstatement of the discharged employees and the award for wages at the regular rate of salary for the time out by reason of the wrongful discharge is an incident to the equitable relief granted." In other words, the petitioner's argument is that a jury trial is not essential in the present controversy, because it is in the nature of an equitable action to restore the status of the complaining employees, the remedy being a mandatory injunction, with damages awarded as an incident of complete relief.

If the petitioner's argument be accepted, its necessary implication is that the procedure prescribed by the Act is in derogation of Section 2 of Article III of the Constitution which ordains that "The Judicial Power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States * * *" Can there be any doubt that the Labor Act has sought to vest the powers of a constitutional court sitting in equity, in a quasi-judicial bureau which has no standing before the Constitution?

In this connection we submit that the construction of the Constitutional clause in *Crowell v. Benson*, 285 U. S. 22 (1932) is applicable, and that the procedural requirements of the Act are fatal to its validity, because they make no provision for and in fact deny a trial *de novo* before a constitutional court on jurisdictional issues. In the *Benson* case, the Court had before it proceedings under the Longshoremen's and Harbor Workers' Compensation Act, involving a claim for compensation by an injured employee. In the present case the claim is by a discharged employee for restoration of his employment, with compensation for lost pay. In each

case private rights are sought to be protected and private remedies granted.

The procedure of the Compensation Act, which was in issue in the *Benson* case, met the demands of the Constitution because Congress *had* provided for a hearing on jurisdictional issues in injunction proceedings in the District Courts. The Labor Act has no such saving grace, but, on the contrary, as we have pointed out, the *original jurisdiction* of the petitioner is made *exclusive* and the only mode of review is by appeal to the Circuit Court on the record made before the Board itself. The Circuit Court is not empowered to hear jurisdictional issues *de novo,* the scope of its review being confined to the written transcript, subject to further limitations in that only objections which have been urged before the Board are available and in that the findings of the Board are made conclusive.

We submit that the procedure which is authorized by the statute and which has been followed by the Board falls squarely within the condemnation of the majority opinion in the *Benson* case, in which it was said:

> "* * * It is rather a question of the appropriate maintenance of the federal judicial power in requiring the observance of constitutional restrictions. It is the question whether the Congress may substitute for constitutional courts, in which the judicial power of the United States is vested, an administrative agency — in this instance a single deputy commissioner — for the final determination of the existence of the facts upon which the enforcement of the constitutional rights of the citizen depend. The recognition of the utility and convenience of administrative agencies for the investigation and finding of facts within their proper province, and the support of their authorized action,

does not require the conclusion that there is no limitation of their use, and that the Congress could completely oust the courts of all determinations of fact by vesting the authority to make them with finality in its own instrumentalities or in the Executive Department. That would be to sap the judicial power as it exists under the Federal Constitution, and to establish a government of a bureaucratic character alien to our system, wherever fundamental rights depend, as not infrequently they do depend, upon the facts, and finality as to facts becomes in effect finality in law." * * *

"In the present instance, the argument that the Congress has constituted the deputy commissioner a fact-finding tribunal is unavailing, as the contention makes the untenable assumption that the constitutional courts may be deprived in all cases of the determination of facts upon evidence even though a constitutional right may be involved. * * *"

"We think that the essential independence of the exercise of the judicial power of the United States, in the enforcement of constitutional rights requires that the federal court should determine such an issue *upon its own record and the facts elicited before it.* * * *" (Italics supplied). (pp. 56-57, 60, 64)

The petitioner may seek to brush aside the implications of the opinion in the *Benson* case by comparing the procedure in the present case to that which has been sanctioned by this Court with respect to the Federal Trade Commission. We submit that there is a clear distinction between the two agencies which nullifies the comparison. The Federal Trade Commission does not pretend to exercise any affirmative powers being merely an agency for the investigation and prevention of unfair

competition and violations of the Anti-Trust Acts. (Sept. 26, 1914, c. 311, §5, 38 Stat. 719; Feb, 13, 1925, c. 229, §2, 43 Stat. 939). Its orders are purely negative and it acts only in cases where the public interest is involved. [cf. *Federal Trade Commission v. Klesner*, 280 U. S. 19 (1929)] or where the United States is the real party in interest and the respondents are violators of quasi-penal statutes. The Commission does not take jurisdiction of controversies between private individuals, nor does it purport to exercise the right to grant affirmative relief to individual complainants. (*Federal Trade Commission v. Klesner, supra*). On the contrary, individuals who may have been prejudiced or damaged by unfair methods of competition or by violations of the Anti-Trust Acts must seek their redress in the constitutional courts. (cf. Oct. 15, 1914, c. 323, §4, 38 Stat. 731).

The petitioner may argue that, in the instant case, the award of an order of restoration of employment with back-pay, was merely incidental to a cease and desist order, but the nature of the complaint, the scope of the hearing and the character of the petitioner's own decision all belie such a position. In reply to such a contention, we will stand upon the record, for we are convinced that it will bear no other construction than that the principal object of the proceedings was the restoration of the complaining employees. This, too, was the primary aim of the petitioners' order, for the negative portions of its order are based upon its findings with respect to the disciplinary acts in issue and are ancillary to and in aid of its affirmative decree. (R. 33-45)

POINT IV.

The Provisions of the National Labor Relations Act Which the National Labor Relations Board Seeks to Apply to This Respondent Are Invalid and Void Under the Fifth Amendment to the Constitution of the United States.

As the statement of facts has indicated (pages 3 to 7 *supra*), the gravamen of the complaint of the National Labor Relations Board is the alleged wrongful discharge of ten production employees of the respondent. As we have pointed out, the decision of the Board has endeavored to color these charges by surrounding them with other findings that the respondent has discriminated against the Amalgamated Association of Iron, Steel and Tin Workers. These findings, which might be termed the atmosphere of the petitioners decision, are not justified by any competent evidence, being almost entirely based upon conditions and transactions alleged to have occurred long before the enactment of the National Labor Relations Act. The Board has also provided atmosphere for its decision by investigating the past history of industry in its attitude toward and relations with labor organizations. The great mass of theoretical data and opinion evidence received by the Board on this point is by no means competent evidence against the respondent. The procedure adopted by the Board in receiving this evidence in a joint hearing involving the respondent, Wheeling Steel Corporation and Crucible Steel Company, is an implied admission that it is not germane to the actual issues of this case. The history of past labor disputes, involving companies other than the respondent, can have no legitimate bearing upon the attitude of the respondent toward its employees.

A.

THE DECISIONS OF THIS COURT IN ADAIR v. UNITED STATES AND COPPAGE v. KANSAS ARE DETERMINATIVE IN THE PRESENT CASE.

The real issue in the present case, from a factual standpoint, is the alleged commission by the respondent of unfair labor practices in the discharge of union employees. The portion of the statute involved is Section 8 (3), which prohibits discrimination in regard to hire or tenure of employment or of any term or condition of employment to encourage or discourage membership in any labor organization. We believe that this provision constitutes an arbitrary interference with the respondent's freedom of contract and therefore violates the due process requirements of the Fifth Amendment to the Federal Constitution.

Adair v. United States, 208 U. S. 161 (1908) clearly declared that Congress, in the exercise of its regulatory power over interstate commerce, must obey the dictates of due process. More recently, in the Railway Pension case, (*Railroad Retirement Board v. The Alton Railroad Co. et al.,* 295 U. S. 330 (1935)), and then in a decision invalidating the Frazier-Lemke Farm Relief Act, (*Louisville Joint Stock Land Bank v. Radford,* 295 U. S. 555 (1935)), the Court has found Congressional legislation vulnerable because of its unwarranted infringement of the properties and liberties of the people. In the latter decision, speaking through Mr. Justice Brandeis, the Court declared: "The bankruptcy power, like the other great substantive powers of Congress, is subject to the Fifth Amendment." In the former decision, the Court declared, in substance, as in the *Adair* case, that the Railway Pension Act not only was an excessive exercise of power over interstate commerce, but also was in plain disregard of due process requirements.

One of the foremost rights protected by the Constitution is the right to enter or refrain from normal contractual relations. It is a necessary corollary that the law must also respect the individual's freedom to contract concerning the normal incidents of his employment. Similarly, the employer enjoys a corresponding right to conduct his business in an orderly fashion, free from unjustifiable restraints and regimentation. See *Butchers Union Slaughterhouse Co. v. Crescent City Live-Stock Co.*, 111 U. S. 746 (1884), and *Allgeyer v. Louisiana*, 165 U. S. 578 (1897).

These rights have not been enforced in derogation of the Government's power to enact police measures for the protection of the health, safety and well-being of the citizens. Consequently, State laws regulating hours of labor, working conditions and the payment of wages have been upheld, to protect the physical well-being of employees and to prevent fraud and oppression. But once the Government has gone beyond police measures and deliberately interfered with freedom of contract, to force its temporary economic conceptions upon its citizens, the Court has scrutinized its legislative efforts with the greatest of care. The present statute clearly falls into this category. Its provisions relating to majority rule for purposes of collective bargaining and to unfair labor practices are not designed to protect the property of employers or the well-being of employees, but are rather intended to force a novel economic policy into the relations of employees with each other and with their employers. Therefore, it is proper to consider whether or not they infringe upon the freedom of the parties to such an extent as to render them subject to attack.

In *Adair v. United States*, 208 U. S. 161 (1908), similar legislation of Congress prohibiting discrimina-

tion by an employer against union members was invalidated, because it conflicted with the principle of *Allgeyer v. Louisiana*, 165 U. S. 578, *supra*, the Court stating:

"The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it."

"In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land." (pp. 174, 175)

Subsequently, in *Coppage v. Kansas*, 236 U. S. 1 (1914), the Court reexamined the *Adair* case. Again the conclusion was reached that such legislation constituted an unjustifiable interference with the freedom of contract, the Court declaring:

"Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense."

* * * * * *

"And can there be one rule of liberty for the labor organization and its members, and a different and more restrictive rule for employers. We think not; and since the relation of employer and employee is a voluntary relation, as clearly as is that be-

tween members of a labor organization, the employer has the same inherent right to prescribe the terms upon which he will consent to the relationship, and to have them fairly understood and expressed in advance." (pp. 14, 20)

See also: *Adkins v. Childrens Hospital*, 261 U. S. 525 (1923).

The provisions of the Labor Act which are in controversy in the present case present a much greater menace to the employer's freedom of contract than the enactments which were denied validity in the Coppage and Adair cases. In the Adair case the Court had before it a Federal statute prescribing, as a criminal offense, the discharge of an employee because of union activities, while the Kansas statute, which was involved in the Coppage case, merely prohibited employment contracts which required the employee to renounce his membership in a labor organization. The National Labor Relations Act not only prohibits the discharge of employees because of union activities, but it also pretends to give the petitioner authority to require the employer to restore employment. The dangerous implications of such procedure, which will be discussed subsequently in their application to the facts of the present case, are apparent. The employer may be compelled to continue a relationship which is not of his own seeking and his discretion in hiring and retaining employees is completely overridden.

The Labor Board contends that the principle of these decisions has been repudiated *sub silentio* in *Texas & New Orleans Railroad Co. v. Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548 (1930). A careful examination of the facts of that decision, beginning with the several proceedings in the District Court, is convincing that it has no application to the present case.

The *Texas & New Orleans Railroad* case arose under the Railway Labor Act of 1926 which, as we have stated, set up the machinery for the adjustment of disputes as to wages, hours of labor and conditions of employment. The statute did not prohibit or punish the refusal of an employer to employ union members, but provided for the selection of representatives by the carriers and their employees for purposes of adjustment and arbitration under the Act and declared that "representatives, for the purposes of this Act, shall be designated by the respective parties * * * without interference, influence or coercion * * *." The plaintiff organization applied for an increase of wages and after denial, the matter was referred to the United States Board of Mediation. The bill for an injunction alleged that the plaintiff was the authorized representative of the employees and that while the controversy was pending before the Board of Mediation, the defendant undertook the formation of a plant union completely subject to its control and had, in various ways, deliberately attempted to influence, intimidate and coerce members of the plantiff to withdraw in order that negotiations might be had with the new union instead of the plaintiff. The District Court, after a hearing, granted an injunction. Pending final hearing, the defendant proceeded to disregard the injunction and the plaintiff brought contempt proceedings. The lower Court found that the defendant had deliberately violated the restraining order and had by various means coerced and restrained its employees in the selection of a representative under the Act. One of the means complained of was the discharge of members of the plaintiff union. The Court held that the statute was constitutional, that the injunction was properly issued and that it was violated by the defendant's conduct. It therefore entered a decree requiring the defendant to purge itself of contempt by *restoring the*

status quo. When the case came on to final hearing, the District Court, in an opinion published in 25 F. (2d) 876, reaffirmed its previous position, denying a motion of the defendant to vacate the contempt order. *The opinion of the Court clearly indicates that in ordering the restoration of the union employees, it was merely directing the defendant to purge itself of its contempt of the Court's order.* As to this the District Court declared:

> "As to the restoration of Harper, Walker, Stotzer, Hudson, and Ginsberg, this also was merely an act of restoration of status, commanded in order to wipe out the effects and results of disobedience. Nothing in the order attempted to, nor could it, fix any time or conditions to the continuing in place of these persons. It merely declared that the severance of these relations and the disturbance of the *status quo* as to them, which the court found from the evidence had been brought about through a deliberate violation of the injunction order of the court, must be undone, and inferentially that it should not occur again for the same or similar reasons." (p. 877)

The same construction was placed on the Trial Court's decision by the Circuit Court of Appeals in 33 F. (2) 13 (1929).

On the point of constitutionality, the theory of the District Court is clear. It conceived that the Railroad, as a public service corporation, was required to continue operations so long as the government should direct. The Railway Labor Act of 1926 was held a proper exercise of the police power of Congress, because it was a means calculated to prevent the interruption of service. Since it was proper to provide a Board of Mediation for the adjustment of labor disputes, Congress had implied

power to provide means for the selection of representatives to appear before the Board. This clearly appears from the statement of the District Court in its opinion at 24 F. (2d) 426:

> "Nor can there longer be any doubt that Congress had the power to, and that it must, in the interest of public peace and safety, make certain, in the first step in negotiations between the railroad employer and employee (who have long since come to be recognized, as to this instrument of interstate commerce in their hands, not as private persons having the right to exercise 'liberty through sheer antipathy,' but as trustees of the public), that representatives of the railroad companies should not meet representatives of the employees, nominally elected by them, but in fact under the influence and control of the railroad companies. I therefore easily find that the legislation in question was not only within the power of Congress to enact, but that it should be liberally construed and applied, so as to give effect to the paramount public convenience subserved by it." (p. 431)

On appeal, in 33 F. (2d) 13, the Circuit Court of Appeals affirmed the doctrine of the trial court, in the following language:

> "We think that under the power to regulate interstate commerce it is competent for Congress to make provision for the settlement of disputes between interstate carriers and their employees with reference to rates of wages, rules, and working conditions, to the end of preventing such disputes resulting in the interruption or stopping of the movement in interstate commerce of freight or passengers. *Wilson v. New*, 243 U. S. 332, 37 S. Ct. 298, 61 L. Ed. 755, L. R. A. 1917E, 938, Ann. Cas. 1918A, 1024." (p. 16)

This Court, as we have stated at another point in this brief (see *supra* page 76), adopted the arguments of the lower courts in sustaining the statute.

It will be seen from the foregoing discussion that the *Texas & New Orleans* case in no way conflicts with the *Coppage* case or the *Adair* case. The more recent decision did not involve a statutory prohibition against the discharge of union members. The Railway Labor Act merely forbade interference with the process of selecting representatives for mediation purposes, and the preliminary injunction of the District Court had sought to enforce the statutory command. When its injunction was violated, through the consistent campaign of the railroad to undermine the plaintiff organization, the District Court adjudged the defendant in contempt and as a part of its judgment, required the defendant to restore the status existing before its decree, even though this required the restoration of certain union employees.

This distinction between the earlier decisions in the *Adair* and *Coppage* cases and the recent decision in the *Texas & New Orleans Railroad Company* case is well stated in the opinion of Judge Wilbur of the Circuit Court of Appeals for the Ninth Circuit, in *National Labor Relations Board v. Mackey Radio & Telegraph Company* (decided January 11, 1937). Judge Wilbur says:

> "It is thus apparent that the Supreme Court had under consideration in *Texas & N. O. R. Co. v. Brotherhood of Ry. & S. S. Clerks*, 281 & S. 548, *supra*, the single question of whether or not Congress in setting up a scheme for voluntary arbitration of railway labor disputes could prohibit interference by the one party, the Railroad Company, with the rights of the other parties, the employees to select those who were to represent them in the

proposed arbitration, or it might be put thus, were the representatives selected by the employees for bargaining with the employer as to the proposed arbitration to be acceptable to the employer or to the employees? It is clear, as the court stated, that the principles announced in *Adair v. United States*, have no relevancy to this question. It is equally clear that *Texas & N. O. R. Co. v. Brotherhood, etc., supra*, does not modify nor overrule the earlier cases. In this regard it should be stated that some confusion arises in a consideration of this decision from the fact that the trial judge, in his adjudication of contempt in the *Texas and New Orleans R. R.* case required the Railroad Company to restore certain employees who had been discharged in violation of the injunction. This inherent power of the court to enforce its injunctive orders has nothing to do with the power of Congress to regulate or interfere with the right of contract. It is not altogether clear that the Supreme Court had before it the question of the validity of the order adjudging the Railroad Company guilty of contempt. In any event the decision on that question is irrelevant to the issue in the case at bar.

"What the petitioner seeks in this case is the approval and the enforcement of an order which clearly violates the fundamental right of the respondent guaranteed to it by the Fifth Amendment to the Constitution. If we act upon the principles of constitutional law relating to the liberty to contract as announced by the Supreme Court in *Adair v. United States, supra*, and *Coppage v. Kansas, supra*, our inquiry would end here for it was there held that an employer had a right to refuse to contract with a present or prospective member of a labor organization, if he so desired, and that an act

> of Congress, in one case, and a statute of a state, in the other, which prohibited that exercise of discretion, or choice, on the part of the employer was unconstitutional and void because a violation of the Fifth Amendment."

The petitioner makes a brave effort to compare the facts of this case with the issues of the Texas & New Orleans Railroad Company case, by pointing out that its order against the respondent was designed primarily to enjoin the respondent from interfering with the organization activities of its employees and that it directed the restoration of the complaining employees as a mere incident to this negative relief. This argument is subject to two serious objections. In the first place, the entire record demonstrates that the primary purpose of the suit was the restoration of the ten employees, the "cease and desist" portions of the petitioner's decree being purely ancillary. In the second place, the petitioner's argument, in stressing that the respondent has no constitutional right to interfere with the organization activities of its employees, totally disregards the fact that its own order purports to deprive the respondent of its constitutional right to employ in accordance with its own selection.

Nor is this the only distinction between the legislation which was in issue in the Texas & New Orleans case and the National Labor Relations Act, as it applies to the petitioner.

As we have stressed before, the power of Congress over interstate carriers is almost plenary in character. Carriers, being public utilities, are required to maintain a continuous service and Congress may, if it deems fit, compel the carrier to maintain such service, even against its wishes. The drastic wage-fixing provisions of the Adamson Act would not have been upheld in *Wilson v.*

New, 243 U. S. 332 (1917), if this Court had not believed that it was "essential to protect the public right and safeguard the movement of interstate commerce * * *."

No one could contend that the respondent is in the same category as a railroad or that Congress would have the right to compel it to continue operations against its will. *This distinction is absolutely fundamental.*

Thus in *Chas. Wolff Packing Co. v. Court of Industrial Relations*, 262 U. S. 522 (1923), a Kansas statute creating an industrial court with power to hear disputes between employer and employees over wages and other terms of employment was involved. The statute was confined in operation to employers engaged in the business of manufacturing food and certain other more or less essential industries, the determination of the public character of the employer's business being vested in the industrial court. The Court said of the statute that:

> "It curtails the right of the employer on the one hand, and of the employee on the other, to contract about his affairs. This is part of the liberty of the individual protected by the guaranty of the due process clause of the Fourteenth Amendment. *Meyer v. Nebraska*, 262 U. S. 390 (1923). While there is no such thing as absolute freedom of contract, and it is subject to a variety of restraints, they must not be arbitrary or unreasonable. Freedom is the general rule, and restraint the exception." (p. 534)

An argument in support of the statute was made, that it applied only to businesses affected with a public interest, and reference was made to the case of *Wilson v. New, supra.* The Court pointed out that the distinction lay in the fact that Congress had power to compel the continued operation of the railroads, and therefore to pass regulations which would insure such continuity

of operations. This element, the Court declared, was lacking in ordinary businesses, irrespective of their size and importance, stating:

> "But the chief and conclusive distinction between *Wilson v. New* and the case before us is that already referred to. The power of a Legislature to compel continuity in a business can only arise where the obligation of continued service by the owner and its employees is direct and is assumed when the business is entered upon. A common carrier, which accepts a railroad franchise, is not free to withdraw the use of that which it has granted to the public. It is true that if operation is impossible without continuous loss (*Brooks-Scanlon Co. v. R. R. Commission*, 251 U. S. 396; *Bullock v. R. R. Commission*, 254 U. S. 513, it may give up its franchise and enterprise, but, short of this, it must continue. Not so the owner, when by mere changed conditions his business becomes clothed with a public interest. He may stop at will, whether the business be losing or profitable.
>
> The minutely detailed government supervision, including that of their relations to their employees, to which the railroads of the country have been gradually subjected by Congress through its power over interstate commerce, furnishes no precedent for regulation of the business of the plaintiff in error, whose classification as public is at the best doubtful." (pp. 543-544)

This principle was reiterated, when the statute came before the Court again (287 U. S. 552), in the statement that:

> "The Court recognized that, in a sense, all business is of some concern to the public, and subject to some measure of regulation, but made it plain that the extent to which regulation reasonably may go

varies greatly with different classes of business, and is not a matter of legislative discretion solely, but is a judicial question to be determined with due regard to the rights of the owner and employees. Care was taken to point out that operating a railroad, keeping an inn, conducting an elevator and following a common calling are not all in the same class, and particularly to point out the distinctions between quasi public business conducted under a public grant imposing a correlative duty to operate, a business originally private which comes to be affected with a public interest through a change in pais, and a business which not only was private in the beginning but has remained such. The conclusion was that power to compel the continuance of a business because affected with a public interest is altogether exceptional."

"The system of compulsory arbitration which the act establishes is intended to compel, and if sustained will compel, the owner and employes to continue the business on terms which are not of their making. It will constrain them, not merely to respect the terms if they continue the business, but will constrain them to continue the business on those terms. True, the terms have some qualifications, but as shown in the prior decision the qualifications are rather illusory and do not subtract much from the duty imposed. Such a system infringes the liberty of contract and rights of property guaranteed by the due process of law clause of the Fourteenth Amendment." (pp. 567, 569)

That the size of the respondents business has no bearing on the question is indicated in *Williams v. Standard Oil Co.*, 278 U. S. 235 (1929), where it was said:

"Affirmatively, it means that a business or property, in order to be affected with a public interest,

must be such or be so employed as to justify the conclusion that it has been devoted to a public use and its use thereby in effect granted to the public. *Tyson & Brother v. Banton, supra,* at p. 434. Negatively, it does not mean that a business is affected with a public interest merely because it is large or because the public are warranted in having a feeling of concern in respect of its maintenance. * * *" (p. 240)

See also

Ribnik v. McBride, 277 U. S. 350 (1928);
Tyson & Bro. v. Banton, 273 U. S. 418 (1927);
New State Ice Co. v. Liebmann, 285 U. S. 262 (1932).

B.

THE PETITIONER'S ACTION CONSTITUTES AN UNLAWFUL INTERFERENCE WITH THE NORMAL RIGHT OF THE RESPONDENT TO MANAGE ITS OWN BUSINESS.

The text of this brief might well be taken from the paragraph of the majority opinion in *Railroad Retirement Board v. The Alton Railroad Co., et al.,* 295 U. S. 330 (1935), where, in speaking of the *Texas & New Orleans Railroad* decision, it was said:

"The railroad labor act was upheld by this court upon the express ground that to facilitate the amicable settlement of disputes which threatened the service of the necessary agencies of interstate transportation tended to prevent interruptions of service and was therefore within the delegated power of regulation. *It was pointed out that the act did not interfere with the normal right of the carrier to select its employees or discharge them. Texas & New Orleans R. Co. v. Brotherhood of Railway &*

S. S. Clerks, 281 U. S. 548, 570, 571." (Italics supplied) (p. 369)

Apply this to the instant case and the results are convincing that the decision of the Labor Board cannot be sustained. In questions of employer-employee relationships, the law has always been hesitant to interfere. Courts of equity from time immemorial have refused to compel specific performance of an employment contract as against either the employer or the employee. From the standpoint of the employee, the law has recognized that he should not be forced into a relationship which may be distasteful to him. From the standpoint of the employer, the courts have recognized that the right to judge the capabilities of his employees is absolutely essential to the proper management of a business. A variety of reasons may lead an employer to discharge an employee. It may be a question of efficiency, of application, or discipline. On other occasions the employer may be required to take action to protect the morale of his other employees, to prevent dissatisfaction of other workers, or to put an end to suspected theft, sabotage or other undesirable conditions. In such cases, it may be preferable, for obvious reasons of policy, to withhold disclosure of the cause of the discharge. In any case the question of judgment is a delicate one which the law has always seen fit to rest in the personal discretion of the employer. If it is proper for the law to deprive the employer of his right to judgment and to rest the function in a board of this character, and then *to compel* the employer to restore the employee who has been discharged, there is an end to efficient management.

The facts of the present case will provide a striking illustration of the menace to the respondent's freedom which inheres in the Labor Act. If the facts with respect to the alleged cases of distrimination are recalled,

it will be observed that in each case the complaining employees were in some way at fault, their principal excuses being that the respondent had not been diligent in discharging other employees for similar faults, or that other employees were the responsible ones. Two of the witnesses charged the respondent with discrimination as to working time, but when they estimated their loss of wages, for purposes of damages, they admitted that they had been receiving fairly steady work. In several instances members of the Board supplied the necessary answers for the witnesses by the form of their questions. If the record is stripped of the atmosphere which was engendered by the hostility of the complaining witnesses, it will be seen that in each case the propriety of the discharge was a matter of discretion, with the petitioner assuming that the discharge must have been wrongful because the complaining witness was a member of a union and because his faults were not, in petitioner's judgment, sufficient to warrant such drastic action.

In short, the petitioner has sat in judgment upon the respondent and determined that it has not properly exercised its discretion to hire and discharge employees. If this is not an interference with the normal right of the respondent to manage its own business (to paraphrase the language of the Court in the *Texas and New Orleans* case), then it would be difficult to find anything which would be. In no case has the law gone to the lengths of requiring an employer to rehire an employee who is considered unfit. Even in cases of a long-term employment contract, the law, at most, awards damages for its breach; it does not compel its continuance.

The language of a New York Court in *H. B. Rosenthal-Ettlinger Co. v. Schlossberg,* 266 N. Y. Supp. 762 (1933), in dealing with a similar provision in Section 7A of the National Recovery Act, is in point:

> "If that (Section 7 A) means that an employer may not discharge an employee for any reason, or for no reason, and in the case of any man discharged, must be prepared to show good cause for the discharge, other than the union affiliations of the man discharged, all employees who are union members have been transferred to a status equivalent to that of the civil service, a result which could not have been intended. Whatever the rule of the unions may be, that is not the law of the land." (p. 764)

This suggests another dangerous consequence of the Labor Act, which is of peculiar importance in the present case. The decision of the Board argues vehemently that there must have been discrimination, because three of the discharged employees were officers of the union. If union members are a preferred class in "a status equivalent to that of the civil service," it is not surprising that some of the union officers, relying upon their sure tenure of employment and immunity from discipline, should be found among those discharged for insubordination or insolence. If the Act gives union men freedom from discharge, it encourages laziness, violation of rules and inefficiency. Employees who are affiliated with a union will consider that fact sufficient protection against demotion or discharge, if the law is to make the employer produce an iron-clad excuse for every disciplinary act. One of the witnesses in this case, who was discharged because a nut fell off a crane which he was required to inspect said he would not go to see if the nut had fallen off (R. 158). Another was not on the job when he was summoned to duty and complains because he was disciplined (R. 174). He apparently believed it union discrimination because he was not given time off to go to a picnic (R. 172). These are trifling things, but they indicate the attitude of insolence and defiance which the Board has encouraged.

In addition to ordering the reinstatement of ten employees, the petitioner ordered the respondent to post notices in conspicuous places in each shop and yard, stating that the respondent "*will not discharge* or in any manner discriminate against members of, or those desiring to become members of, Beaver Valley Lodge No. 200, Amalgamated Association of Iron, Steel and Tin Workers of North America, or persons assisting said organizations or otherwise engaging in union activities * * *."

Such a notice would almost force employees to join the union. No other interpretation would be put upon it by a body of working men. It is the equivalent of telling them that if they become affiliated with this union, they will be thenceforth immune from discharge.

The respondent has 10,000 employees in the Aliquippa plant and 22,000 employees in the vicinity of Pittsburgh. The effect of the reinstatement of those ten men upon the discipline and morale of thousands of workmen would be incalculable. The impaired efficiency, insubordination and confusion which would result among other employees would cost the respondent many thousands of dollars and deprive it of property of substantial value far in excess of the amount of wages involved in this particular case.

The National Labor Relations Board in this case has said that the respondent must revoke its considered judgment and must retain and pay wages to employees whom it has deemed unfit to work in its plant. The judgment of the employer, though it be based on considerations of efficiency, morale, discipline or safety, is arbitrarily set aside and the freedom and rights of the employer abandoned to enforce a dubious economic policy. What right would the Congress of the United States have to compel this respondent to operate its plant if it

desired to discontinue operations or to require it to operate in a way which economists might deem more efficient? By the same token, what right has the Federal Government to require it to enter into a relationship which it condemns as opposed to its best judgment? And what right has the National Labor Relations Board, with its apparent objective of organizing the Steel Industry, to usurp the management of the respondent and to encourage laziness, disobedience and sabotage among its employees?

In closing this point of the case, it might be well to advert briefly to the underlying philosophy of the National Labor Relations Act. As we have pointed out in our discussion of the substantive provisions of the Act, Section 9 establishes the so-called majority rule, which, in effect, declares that the Board has the power to certify the representatives of a majority of the employees as the exclusive representatives of all the employes, for purposes of collective bargaining with respect to wages, hours of labor and working conditions. Individual employees and minority groups are thereby deprived of their right to bargain with their employer, although the right to present individual grievances is preserved. The other provisions of the Act are designed, in the last analysis, to buttress the effect of the majority rule. National labor organizations are sanctioned as the exclusive representatives of employees by Section 7 of the Act. Section 8 penalizes the employer who seeks to encourage or discourage membership in a union, but at the same time expressly sanctions the closed shop contract, if entered into between the employer and the union representing the majority of his employees. In other words, while the employer may not discharge a union employee, he may insist that all of his employees shall join, support and pay dues to an organization which is the favorite of the majority. Subdivision 5 of Sec-

tion 8 lends further weight to the majority rule, by requiring the employer to bargain exclusively with the representatives of the majority.

The petitioner, in its argument in this case, does not refer to the question of majority rule and will no doubt argue that its decision and order have not applied it in this case. Nevertheless, the testimony which was received extolled the virtues of exclusive representation by an organization, as well as the alleged advantages of a closed shop, and it is clearly the theory of the petitioner, as we have demonstrated, that if the respondent's plant were organized, the movement of interstate commerce would be free from potential restraints. Because of this fact, we think that we are entitled to observe that the underlying philosophy of the Act was condemned by the Court as an unreasonable restraint on freedom to contract. The Bituminous Coal Conservation Act of 1935 provided that wages and hours of labor should be governed in the coal industry by collective agreements between representatives of the producer and representatives of "a majority of the mine workers." The Court, in *Carter v. Carter Coal Co.*, 298 U. S. 238, *supra*, adverted briefly to this provision, in the statement:

> "The power conferred upon the majority is, in effect, the power to regulate the affairs of an unwilling minority. This is legislative delegation in its most obnoxious form; for it is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interests may be and often are adverse to the interests of others in the same business. The record shows that the conditions of competition differ among the various localities. In some, coal dealers compete among themselves. In other localities, they also

compete with the mechanical production of electrical energy and of natural gas. Some coal producers favor the code; others oppose it; and the record clearly indicates that this diversity of view arises from their conflicting and even antagonistic interests. The difference between producing coal and regulating its production is, of course, fundamental. The former is a private activity; the latter is necessarily a governmental function, since, in the very nature of things, one person may not be entrusted with the power to regulate the business of another, and especially of a competitor. And a statute which attempts to confer such power undertakes an intolerable and unconstitutional interference with personal liberty and private property. The delegation is so clearly arbitrary, and so clearly a denial of rights safeguarded by the due process clause of the Fifth Amendment, that it is unnecessary to do more than refer to decisions of this court, which foreclose the question. *Schechter Corp. v. United States,* 295 U. S. at p. 537; *Eubank v. Richmond,* 226 U. S. 137, 143; *Seattle Trust Co. v. Roberg,* 278 U. S. 116, 121-122." (pp. 311-312)

CONCLUSION.

The bulk of the testimony heard by the petitioner consisted of expert, economic and political opinion which depicted the harmful effects of labor disputes and strikes and extolled the virtues of organization and union contracts. Considering that this phase of the hearing was entirely *ex parte* and that no witnesses appeared to point out the disadvantages of a "closed shop" and its injustice to employees who desire to work without joining any union, it is not surprising that the

argument may, at first glance, seem persuasive. The fact is, however, that it is wholly immaterial.

In complete disregard of the respondent's right to manage and enjoy the fruits of its own property under the due process clause, the petitioner is asking this Court to find that the advantages of union organization outweigh the dangers of infringing upon the respondent's freedom of contract. Legal justification for the action of the Board cannot be supplied by the reference to the economists who appeared as expert witnesses, to testify to their views that union organization and the "closed shop" would be better for industry and the country generally.

For *their* views they are answerable to no one but themselves and, if they are wrong, they bear none of the losses, while the management of a large corporation is responsible to its stockholders and to its employees for the conduct of the business. The open shop policy, so long pursued by the vast majority of American employers, has enabled them to protect the interests of their employees, who do not desire unionization, and to compel unions, in a measure, to rely upon their own merits to expand their membership, instead of depending upon compulsory membership by operation of laws. American industry has gone far under such a policy, with benefit not only to stockholders, but also to employees.

If the experts and economists who spoke before the Board can thrust upon the employer, as the petitioner urges, a new economic policy with respect to labor, and if the National Labor Relations Board can, by its decision, scrap the considerations which led to the discharge of a few of respondent's employees and force their reinstatement, upon the basis of the economists' theories as to the proper method of handling labor

problems, there would seem to be no reason why other boards and bureaus could not be authorized by Congress to dictate or control other business policies of employers.

The same methods have been used to persuade this Court that the Labor Act is an appropriate vehicle for Federal action. The argument again is one of expediency, and not of law. Perhaps the Congress of the United States is better fitted to deal with the problem of labor relations than the legislative bodies of the separate States. Perhaps the management and regulation of every business by commissions and boards, who are not responsible to the owners, would carry the same appeal to the economists and theorists who testified in this case. But such regimentation is not permitted under our fundamental law. A brief phrase from the opinion of Judge Hand of the Second Circuit, in the *Schechter* case, is a better reply to the petitioner's argument than a host of economic treatises:

> "It may indeed follow that the nation cannot, as a unit, meet any of the great crises of its existence, except war, and that it must obtain the concurrence of the separate states; but that to some extent is implicit in any federation, and the resulting weaknesses have not hitherto been thought to outweigh the dangers of a completely centralized government. *If the American people have come to believe otherwise, Congress is not their accredited organ to express their will to change.*" [*United States v. A. L. A. Schechter Poultry Corporation*, 76 F (2) 617, 627 (1935)].

For more than a century this Court has steadfastly adhered to the simple, literal meaning which the great Marshall found in the commerce clause—that Congress has power—in the words of the Constitution—"*to regulate commerce among the several states.*" Since *Gib-*

bone v. Ogden, it has given assurance to the States, to their citizens and to the federal union that their respective rights and powers, as the Constitution fixes them, shall be preserved. The taxing authority and police powers of the several States have been protected from encroachment because this Court has always ruled that local activities, such as mining and industry, are within their exclusive jurisdiction. By the same devotion to the mandate of the Constitution, the rights of individuals to freedom from unjustifiable restraint have been sanctioned.

The petitioner is asking that the traditions and precedents of a century be cast aside and the Constitution corrupted for the sake of a temporary expediency. To change *the established meaning* of the Constitution now, by judicial decree, without a proper mandate from the people, would make a mockery of constitutional government.

Respectfully submitted,

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p. 5, l + 21 of dissent

SUPREME COURT OF THE UNITED STATES.

No. 419.—October Term, 1936.

National Labor Relations Board, Petitioner, *vs.* Jones & Laughlin Steel Corporation.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[April 12, 1937.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

In a proceeding under the National Labor Relations Act of 1935,[1] the National Labor Relations Board found that the ~~petitioner~~ respondent, Jones & Laughlin Steel Corporation, had violated the Act by engaging in unfair labor practices affecting commerce. The proceeding was instituted by the Beaver Valley Lodge No. 200, affiliated with the Amalgamated Association of Iron, Steel and Tin Workers of America, a labor organization. The unfair labor practices charged were that the corporation was discriminating against members of the union with regard to hire and tenure of employment, and was coercing and intimidating its employees in order to interfere with their self-organization. The discriminatory and coercive action alleged was the discharge of certain employees.

The National Labor Relations Board, sustaining the charge, ordered the corporation to cease and desist from such discrimination and coercion, to offer reinstatement to ten of the employees named, to make good their losses in pay, and to post for thirty days notices that the corporation would not discharge or discriminate against members, or those desiring to become members, of the labor union. As the corporation failed to comply, the Board petitioned the Circuit Court of Appeals to enforce the order. The court denied the petition, holding that the order lay beyond the range of federal power. 83 F. (2d) 998. We granted certiorari.

The scheme of the National Labor Relations Act—which is too long to be quoted in full—may be briefly stated. The first section sets forth findings with respect to the injury to commerce resulting

[1] Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151.

from the denial by employers of the right of employees to organize and from the refusal of employers to accept the procedure of collective bargaining. There follows a declaration that it is the policy of the United States to eliminate these causes of obstruction to the free flow of commerce.[2] The Act then defines the terms it uses, including the terms "commerce" and "affecting commerce". Sec. 2. It creates the National Labor Relations Board and prescribes its organization. Secs. 3-6. It sets forth the right of employees to self-organization and to bargain collectively through representatives of their own choosing. Sec. 7. It defines "unfair labor practices". Sec. 8. It lays down rules as to the representation of employees for the purpose of collective bargaining. Sec. 9. The Board is empowered to prevent the described unfair labor practices affecting commerce and the Act prescribes the procedure to that end. The Board is authorized to petition designated courts to secure the enforcement of its order. The findings of the Board as to the facts, if supported by evidence, are to be conclusive. If either party on application

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[2] This section is as follows:

"Section 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

"The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection".

to the court shows that additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearings before the Board, the court may order the additional evidence to be taken. Any person aggrieved by a final order of the Board may obtain a review in the designated courts with the same procedure as in the case of an application by the Board for the enforcement of its order. Sec. 10. The Board has broad powers of investigation. Sec. 11. Interference with members of the Board or its agents in the performance of their duties is punishable by fine and imprisonment. Sec. 12. Nothing in the Act is to be construed to interfere with the right to strike. Sec. 13. There is a separability clause to the effect that if any provision of the Act or its application to any person or circumstances shall be held invalid, the remainder of the Act or its application to other persons or circumstances shall not be affected. Sec. 15. The particular provisions which are involved in the instant case will be considered more in detail in the course of the discussion.

The procedure in the instant case followed the statute. The labor union filed with the Board its verified charge. The Board thereupon issued its complaint against the respondent alleging that its action in discharging the employees in question constituted unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act. Respondent, appearing specially for the purpose of objecting to the jurisdiction of the Board, filed its answer. Respondent admitted the discharges, but alleged that they were made because of inefficiency or violation of rules or for other good reasons and were not ascribable to union membership or activities. As an affirmative defense respondent challenged the constitutional validity of the statute and its applicability in the instant case. Notice of hearing was given and respondent appeared by counsel. The Board first took up the issue of jurisdiction and evidence was presented by both the Board and the respondent. Respondent then moved to dismiss the complaint for lack of jurisdiction and, on denial of that motion, respondent in accordance with its special appearance withdrew from further participation in the hearing. The Board received evidence upon the merits and at its close made its findings and order.

Contesting the ruling of the Board, the respondent argues (1) that the Act is in reality a regulation of labor relations and not

of interstate commerce; (2) that the Act can have no application to the respondent's relations with its production employees because they are not subject to regulation by the federal government; and (3) that the provisions of the Act violate Section 2 of Article III and the Fifth and Seventh Amendments of the Constitution of the United States.

The facts as to the nature and scope of the business of the Jones & Laughlin Steel Corporation have been found by the Labor Board and, so far as they are essential to the determination of this controversy, they are not in dispute. The Labor Board has found: The corporation is organized under the laws of Pennsylvania and has its principal office at Pittsburgh. It is engaged in the business of manufacturing iron and steel in plants situated in Pittsburgh and nearby Aliquippa, Pennsylvania. It manufactures and distributes a widely diversified line of steel and pig iron, being the fourth largest producer of steel in the United States. With its subsidiaries—nineteen in number—it is a completely integrated enterprise, owning and operating ore, coal and limestone properties, lake and river transportation facilities and terminal railroads located at its manufacturing plants. It owns or controls mines in Michigan and Minnesota. It operates four ore steamships on the Great Lakes, used in the transportation of ore to its factories. It owns coal mines in Pennsylvania. It operates towboats and steam barges used in carrying coal to its factories. It owns limestone properties in various places in Pennsylvania and West Virginia. It owns the Monongahela connecting railroad which connects the plants of the Pittsburgh works and forms an interconnection with the Pennsylvania, New York Central and Baltimore and Ohio Railroad systems. It owns the Aliquippa and Southern Railroad Company which connects the Aliquippa works with the Pittsburgh and Lake Erie, part of the New York Central system. Much of its product is shipped to its warehouses in Chicago, Detroit, Cincinnati and Memphis,—to the last two places by means of its own barges and transportation equipment. In Long Island City, New York, and in New Orleans it operates structural steel fabricating shops in connection with the warehousing of semi-finished materials sent from its works. Through one of its wholly-owned subsidiaries it owns, leases and operates stores, warehouses and yards for the distri-

bution of equipment and supplies for drilling and operating oil and gas mills and for pipe lines, refineries and pumping stations. It has sales offices in twenty cities in the United States and a wholly-owned subsidiary which is devoted exclusively to distributing its product in Canada. Approximately 75 per cent. of its product is shipped out of Pennsylvania.

Summarizing these operations, the Labor Board concluded that the works in Pittsburgh and Aliquippa "might be likened to the heart of a self-contained, highly integrated body. They draw in the raw materials from Michigan, Minnesota, West Virginia, Pennsylvania in part through arteries and by means controlled by the respondent; they transform the materials and then pump them out to all parts of the nation through the vast mechanism which the respondent has elaborated". on the of the entire steel industry

To carry ~~out its~~ activities 33,000 men mine ore, 44,000 men mine coal, 4,000 men quarry limestone, 16,000 men manufacture coke, 343,000 men manufacture steel, and 83,000 men transport its product. Respondent has about 10,000 employees in its Aliquippa plant, which is located in a community of about 30,000 persons.

Respondent points to evidence that the Aliquippa plant, in which the discharged men were employed, contains complete facilities for the production of finished and semi-finished iron and steel products from raw materials; that its works consist primarily of a by-product coke plant for the production of coke; blast furnaces for the production of pig iron; open hearth furnaces and Bessemer converters for the production of steel; blooming mills for the reduction of steel ingots into smaller shapes; and a number of finishing mills such as structural mills, rod mills, wire mills and the like. In addition there are other buildings, structures and equipment, storage yards, docks and an intra-plant storage system. Respondent's operations at these works are carried on in two distinct stages, the first being the conversion of raw materials into pig iron and the second being the manufacture of semi-finished and finished iron and steel products; and in both cases the operations result in substantially changing the character, utility and value of the materials wrought upon, which is apparent from the nature and extent of the processes to which they are subjected and which respondent fully describes. Respondent also directs attention to the fact that the iron ore which is procured from mines in Minne-

sota and Michigan and transported to respondent's plant is stored in stock piles for future use, the amount of ore in storage varying with the season but usually being enough to maintain operations from nine to ten months; that the coal which is procured from the mines of a subsidiary located in Pennsylvania and taken to the plant at Aliquippa is there, like ore, stored for future use, approximately two to three months' supply of coal being always on hand; and that the limestone which is obtained in Pennsylvania and West Virginia is also stored in amounts usually adequate to run the blast furnaces for a few weeks. Various details of operation, transportation, and distribution are also mentioned which for the present purpose it is not necessary to detail.

Practically all the factual evidence in the case, except that which dealt with the nature of respondent's business, concerned its relations with the employees in the Aliquippa plant whose discharge was the subject of the complaint. These employees were active leaders in the labor union. Several were officers and others were leaders of particular groups. Two of the employees were motor inspectors; one was a tractor driver; three were crane operators; one was a washer in the coke plant; and three were laborers. Three other employees were mentioned in the complaint but it was withdrawn as to one of them and no evidence was heard on the action taken with respect to the other two.

While respondent criticises the evidence and the attitude of the Board, which is described as being hostile toward employers and particularly toward those who insisted upon their constitutional rights, respondent did not take advantage of its opportunity to present evidence to refute that which was offered to show discrimination and coercion. In this situation, the record presents no ground for setting aside the order of the Board so far as the facts pertaining to the circumstances and purpose of the discharge of the employees are concerned. Upon that point it is sufficient to say that the evidence supports the findings of the Board that respondent discharged these men "because of their union activity and for the purpose of discouraging membership in the union". We turn to the questions of law which respondent urges in contesting the validity and application of the Act.

First. The scope of the Act.—The Act is challenged in its entirety as an attempt to regulate all industry, thus invading the re-

served powers of the States over their local concerns. It is asserted that the references in the Act to interstate and foreign commerce are colorable at best; that the Act is not a true regulation of such commerce or of matters which directly affect it but on the contrary has the fundamental object of placing under the compulsory supervision of the federal government all industrial labor relations within the nation. The argument seeks support in the broad words of the preamble (section one[3]) and in the sweep of the provisions of the Act, and it is further insisted that its legislative history shows an essential universal purpose in the light of which its scope cannot be limited by either construction or by the application of the separability clause.

If this conception of terms, intent and consequent inseparability were sound, the Act would necessarily fall by reason of the limitation upon the federal power which inheres in the constitutional grant, as well as because of the explicit reservation of the Tenth Amendment. *Schechter Corporation* v. *United States,* 295 U. S. 495, 549, 550, 554. The authority of the federal government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce "among the several States" and the internal concerns of a State. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our federal system. *Id.*

But we are not at liberty to deny effect to specific provisions, which Congress has constitutional power to enact, by superimposing upon them inferences from general legislative declarations of an ambiguous character, even if found in the same statute. The cardinal principle of statutory construction is to save and not to destroy. We have repeatedly held that as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act. Even to avoid a serious doubt the rule is the same. *Federal Trade Commission* v. *American Tobacco Co.,* 264 U. S. 298, 307; *Panama R. R. Co.* v. *Johnson,* 264 U. S. 375, 390; *Missouri Pacific R. R. Co.* v. *Boone,* 270 U. S. 466, 472; *Blodgett* v. *Holden,* 275 U. S. 142, 148; *Richmond Screw Anchor Co.* v. *United States,* 275 U. S. 331, 346.

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[3] See Note. 2.

We think it clear that the National Labor Relations Act may be construed so as to operate within the sphere of constitutional authority. The jurisdiction conferred upon the Board, and invoked in this instance, is found in Section 10 (a), which provides:

"Sec. 10 (a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce".

The critical words of this provision, prescribing the limits of the Board's authority in dealing with the labor practices, are "affecting commerce". The Act specifically defines the "commerce" to which it refers (sec. 2 (6)):

"The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country."

There can be no question that the commerce thus contemplated by the Act (aside from that within a Territory or the District of Columbia) is interstate and foreign commerce in the constitutional sense. The Act also defines the term "affecting commerce" (sec. 2 (7)):

"The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce".

This definition is one of exclusion as well as inclusion. The grant of authority to the Board does not purport to extend to the relationship between all industrial employees and employers. Its terms do not impose collective bargaining upon all industry regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to burden or obstruct that commerce and, thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds. It is a familiar principle that acts which directly burden or obstruct interstate or foreign commerce, or its free flow, are within the reach of the congressional power. Acts having that effect are not rendered immune because they grow out of labor disputes. See *Texas & N. O. R. Co.* v. *Railway Clerks*, 281 U. S. 548, 570; *Schechter Corporation* v.

United States, supra, pp. 544, 545; *Virginian Railway* v. *System Federation, No. 40*, decided March 29, 1937. It is the effect upon commerce, not the source of the injury, which is the criterion. *Second Employers' Liability Cases*, 223 U. S. 1, 51. Whether or not particular action does affect commerce in such a close and intimate fashion as to be subject to federal control and hence to lie within the authority conferred upon the Board, is left by the statute to be determined as individual cases arise. We are thus to inquire whether in the instant case the constitutional boundary has been passed.

Second. The unfair labor practices in question.—The unfair labor practices found by the Board are those defined in Section 8, subdivisions (1) and (3). These provide:

"Sec. 8. It shall be an unfair labor practice for an employer—

"(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7".

"(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. . . . .".[4]

Section 8, subdivision (1), refers to Section 7, which is as follows:

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection".

Thus, in its present application, the statute goes no further than to safeguard the right of employees to self-organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer.

That is a fundamental right. Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own of-

[4] What is quoted above is followed by this proviso—not here involved—"*Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made".

ficers and agents. Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority. Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer. *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209. We reiterated these views when we had under consideration the Railway Labor Act of 1926. Fully recognizing the legality of collective action on the part of employees in order to safeguard their proper interests, we said that Congress was not required to ignore this right but could safeguard it. Congress could seek to make appropriate collective action of employees an instrument of peace rather than of strife. We said that such collective action would be a mockery if representation were made futile by interference with freedom of choice. Hence the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees, "instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both". *Texas & N. O. R. Co.* v. *Railway Clerks, supra.* We have reasserted the same principle in sustaining the application of the Railway Labor Act as amended in 1934. *Virginian Railway Co.* v. *System Federation, No. 40, supra.*

Third. The application of the Act to employees engaged in production.—The principle involved.—Respondent says that whatever may be said of employees engaged in interstate commerce, the industrial relations and activities in the manufacturing department of respondent's enterprise are not subject to federal regulation. The argument rests upon the proposition that manufacturing in itself is not commerce. *Kidd* v. *Pearson*, 128 U. S. 1, 20, 21; *United Mine Workers* v. *Coronado Co.*, 259 U. S. 344, 407, 408; *Oliver Iron Co.* v. *Lord*, 262 U. S. 172, 178; *United Leather Workers* v. *Herkert*, 265 U. S. 457, 465; *Industrial Asso-*

ciation v. *United States*, 268 U. S. 64, 82; *Coronado Co.* v. *United Mine Workers*, 268 U. S. 295, 310; *Schechter Corporation* v. *United States*, *supra*, p. 547; *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 304, 317, 327.

The Government distinguishes these cases. The various parts of respondent's enterprise are described as interdependent and as thus involving "a great movement of iron ore, coal and limestone along well-defined paths to the steel mills, thence through them, and thence in the form of steel products into the consuming centers of the country—a definite and well-understood course of business". It is urged that these activities constitute a "stream" or "flow" of commerce, of which the Aliquippa manufacturing plant is the focal point, and that industrial strife at that point would cripple the entire movement. Reference is made to our decision sustaining the Packers and Stockyards Act.[5] *Stafford* v. *Wallace*, 258 U. S. 495. The Court found that the stockyards were but a "throat" through which the current of commerce flowed and the transactions which there occurred could not be separated from that movement. Hence the sales at the stockyards were not regarded as merely local transactions, for while they created "a local change of title" they did not "stop the flow", but merely changed the private interests in the subject of the current. Distinguishing the cases which upheld the power of the State to impose a non-discriminatory tax upon property which the owner intended to transport to another State, but which was not in actual transit and was held within the State subject to the disposition of the owner, the Court remarked: "The question, it should be observed, is not with respect to the extent of the power of Congress to regulate interstate commerce, but whether a particular exercise of state power in view of its nature and operation must be deemed to be in conflict with this paramount authority". *Id.*, p. 526. See *Minnesota* v. *Blasius*, 290 U. S. 1, 8. Applying the doctrine of *Stafford* v. *Wallace*, *supra*, the Court sustained the Grain Futures Act of 1922[6] with respect to transactions on the Chicago Board of Trade, although these transactions were "not in and of themselves interstate commerce". Congress had found that they had become "a constantly recurring burden and obstruction

[5] 42 Stat. 159.
[6] 42 Stat. 998.

to that commerce". *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 32; compare *Hill* v. *Wallace*, 259 U. S. 44, 69. See, also, *Tagg Bros.* v. *Moorhead*, 280 U. S. 420.

Respondent contends that the instant case presents material distinctions. Respondent says that the Aliquippa plant is extensive in size and represents a large investment in buildings, machinery and equipment. The raw materials which are brought to the plant are delayed for long periods and, after being subjected to manufacturing processes "are changed substantially as to character, utility and value". The finished products which emerge "are to a large extent manufactured without reference to pre-existing orders and contracts and are entirely different from the raw materials which enter at the other end". Hence respondent argues that "If importation and exportation in interstate commerce do not singly transfer purely local activities into the field of congressional regulation, it should follow that their combination would not alter the local situation". *Arkadelphia Milling Co.* v. *St. Louis, Southwestern Railways Co.*, 249 U. S. 134, 151; *Oliver Iron Co.* v. *Lord, supra.*

We do not find it necessary to determine whether these features of defendant's business dispose of the asserted analogy to the "stream of commerce" cases. The instances in which that metaphor has been used are but particular, and not exclusive, illustrations of the protective power which the Government invokes in support of the present Act. The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a "flow" of interstate or foreign commerce. Burdens and obstructions may be due to injurious action springing from other sources. The fundamental principle is that the power to regulate commerce is the power to enact "all appropriate legislation" for "its protection and advancement" (*The Daniel Ball*, 10 Wall. 557, 564); to adopt measures "to promote its growth and insure its safety" (*County of Mobile* v. *Kimball*, 102 U. S. 691, 696, 697); "to foster, protect, control and restrain". *Second Employers' Liability Cases, supra*, p. 47. See *Texas & N. O. R. Co.* v. *Railway Clerks, supra.* That power is plenary and may be exerted to protect interstate commerce "no matter what the source of the dangers which threaten it". *Second Employers' Liability Cases*, p. 51; *Schechter Corporation* v. *United States, supra.* Although activities may be intrastate

in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. *Schechter Corporation* v. *United States, supra.* Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. *Id.* The question is necessarily one of degree. As the Court said in *Chicago Board of Trade* v. *Olsen, supra,* p. 37, repeating what had been said in *Stafford* v. *Wallace, supra:* "Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause and it is primarily for Congress to consider and decide the fact of the danger and meet it".

That intrastate activities, by reason of close and intimate relation to interstate commerce, may fall within federal control is demonstrated in the case of carriers who are engaged in both interstate and intrastate transportation. There federal control has been found essential to secure the freedom of interstate traffic from interference or unjust discrimination and to promote the efficiency of the interstate service. *The Shreveport Case,* 234 U. S. 342, 351, 352; *Wisconsin Railroad Commission* v. *Chicago, B. & Q. R. Co.,* 257 U. S. 563, 588. It is manifest that intrastate rates deal *primarily* with a local activity. But in rate-making they bear such a close relation to interstate rates that effective control of the one must embrace some control over the other. *Id.* Under the Transportation Act, 1920,[7] Congress went so far as to authorize the Interstate Commerce Commission to establish a state-wide level of intrastate rates in order to prevent an unjust discrimination against interstate commerce. *Wisconsin Railroad Commission* v. *Chicago, B. & Q. R. R. Co., supra; Florida* v. *United States,* 282 U. S. 210, 211. Other illustrations are found in the broad requirements of the Safety Appliance Act and the Hours of Service Act. *Southern Railway Co.* v. *United States,* 222 U. S. 20; *Baltimore & Ohio R. R.*

[7] Secs. 416, 422, 41 Stat. 484, 488; Interstate Commerce Act, sec. 13 (4).

Co. v. *Interstate Commerce Commission*, 221 U. S. 612. It is said that this exercise of federal power has relation to the maintenance of adequate instrumentalities of interstate commerce. But the agency is not superior to the commerce which uses it. The protective power extends to the former because it exists as to the latter.

The close and intimate effect which brings the subject within the reach of federal power may be due to activities in relation to productive industry although the industry when separately viewed is local. This has been abundantly illustrated in the application of the federal Anti-Trust Act. In the *Standard Oil and American Tobacco cases*, 221 U. S. 1, 106, that statute was applied to combinations of employers engaged in productive industry. Counsel for the offending corporations strongly urged that the Sherman Act had no application because the acts complained of were not acts of interstate or foreign commerce, nor direct and immediate in their effect on interstate or foreign commerce, but primarily affected manufacturing and not commerce. 221 U. S. pp. 5, 125. Counsel relied upon the decision in *United States* v. *Knight Co.*, 156 U. S. 1. The Court stated their contention as follows: "That the act, even if the averments of the bill be true, cannot be constitutionally applied, because to do so would extend the power of Congress to subject *dehors* the reach of its authority to regulate commerce, by enabling that body to deal with mere questions of production of commodities within the States". And the Court summarily dismissed the contention in these words: "But all the structure upon which this argument proceeds is based upon the decision in *United States* v. *E. C. Knight Co.*, 156 U. S. 1. The view, however, which the argument takes of that case and the arguments based upon that view have been so repeatedly pressed upon this court in connection with the interpretation and enforcement of the Anti-trust Act, and have been so necessarily and expressly decided to be unsound as to cause the contentions to be plainly foreclosed and to require no express notice" (citing cases). 221 U. S. pp. 68, 69.

Upon the same principle, the Anti-Trust Act has been applied to the conduct of employees engaged in production. *Loewe* v. *Lawlor*, 208 U. S. 274; *Coronado Coal Co.* v. *United Mine Workers, supra; Bedford Cut Stone Co.* v. *Stonecutters Association*, 274 U. S. 29. See, also, *Local 167* v. *United States*, 291 U. S. 293, 297; *Schechter Corporation* v. *United States, supra.* The decisions dealing with the question of that application illustrate both the prin-

ciple and its limitation. Thus, in the first *Coronado* case, the Court held that mining was not interstate commerce, that the power of Congress did not extend to its regulation as such, and that it had not been shown that the activities there involved—a local strike—brought them within the provisions of the Anti-Trust Act, notwithstanding the broad terms of that statute. A similar conclusion was reached in *United Leather Workers* v. *Herkert, supra, Industrial Association* v. *United States, supra,* and *Levering & Garrigues Co.* v. *Morrin,* 289 U. S. 103, 107. But in the first *Coronado* case the Court also said that "if Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain or burden it, it has the power to subject them to national supervision and restraint". 259 U. S. p. 408. And in the second *Coronado* case the Court ruled that while the mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce, nevertheless when the "intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets, their action is a direct violation of the Anti-Trust Act". 268 U. S. p. 310. And the existence of that intent may be a necessary inference from proof of the direct and substantial effect produced by the employees' conduct. *International Association* v. *United States,* 268 U. S. p. 81. What was absent from the evidence in the first *Coronado* case appeared in the second and the Act was accordingly applied to the mining employees.

It is thus apparent that the fact that the employees here concerned were engaged in production is not determinative. The question remains as to the effect upon interstate commerce of the labor practice involved. In the *Schechter* case, *supra,* we found that the effect there was so remote as to be beyond the federal power. To find "immediacy or directness" there was to find it "almost everywhere", a result inconsistent with the maintenance of our federal system. In the *Carter* case, *supra,* the Court was of the opinion that the provisions of the statute relating to production were invalid upon several grounds,—that there was improper delegation of legislative power, and that the requirements not only went beyond any sustainable measure of protection of interstate

commerce but were also inconsistent with due process. These cases are not controlling here.

Fourth. Effects of the unfair labor practice in respondent's enterprise.—Giving full weight to respondent's contention with respect to a break in the complete continuity of the "stream of commerce" by reason of respondent's manufacturing operations, the fact remains that the stoppage of those operations by industrial strife would have a most serious effect upon interstate commerce. In view of respondent's far-flung activities, it is idle to say that the effect would be indirect or remote. It is obvious that it would be immediate and might be catastrophic. We are asked to shut our eyes to the plainest facts of our national life and to deal with the question of direct and indirect effects in an intellectual vacuum. Because there may be but indirect and remote effects upon interstate commerce in connection with a host of local enterprises throughout the country, it does not follow that other industrial activities do not have such a close and intimate relation to interstate commerce as to make the presence of industrial strife a matter of the most urgent national concern. When industries organize themselves on a national scale, making their relation to interstate commerce the dominant factor in their activities, how can it be maintained that their industrial labor relations constitute a forbidden field into which Congress may not enter when it is necessary to protect interstate commerce from the paralyzing consequences of industrial war? We have often said that interstate commerce itself is a practical conception. It is equally true that interferences with that commerce must be appraised by a judgment that does not ignore actual experience.

Experience has abundantly demonstrated that the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace. Refusal to confer and negotiate has been one of the most prolific causes of strife. This is such an outstanding fact in the history of labor disturbances that it is a proper subject of judicial notice and requires no citation of instances. The opinion in the case of *Virginian Railway Co.* v. *System Federation, No. 40, supra,* points out that, in the case of carriers, experience has shown that before the amendment, of 1934, of the Railway Labor Act "when there was no dispute as to the organizations authorized to represent the employees

and when there was a willingness of the employer to meet such representative for a discussion of their grievances, amicable adjustment of differences had generally followed and strikes had been avoided". That, on the other hand, "a prolific source of dispute had been the maintenance by the railroad of company unions and the denial by railway management of the authority of representatives chosen by their employees". The opinion in that case also points to the large measure of success of the labor policy embodied in the Railway Labor Act. But with respect to the appropriateness of the recognition of self-organizattion and representation in the promotion of peace, the question is not essentially different in the case of employees in industries of such a character that interstate commerce is put in jeopardy from the case of employees of transportation companies. And of what avail is it to protect the facility of transportation, if interstate commerce is throttled with respect to the commodities to be transported!

These questions have frequently engaged the attention of Congress and have been the subject of many inquiries.[8] The steel industry is one of the great basic industries of the United States, with ramifying activities affecting interstate commerce at every point. The Government aptly refers to the steel strike of 1919-1920 with its far-reaching consequences.[9] The fact that there appears to have been no major disturbance in that industry in the more recent period did not dispose of the possibilties of future and like dangers to interstate commerce which Congress was entitled to foresee and to exercise its protective power to forestall. It is not necessary again to detail the facts as to respondent's enterprise. Instead of being beyond the pale, we think that it presents in a most striking way the close and intimate relation which a manufacturing industry may have to interstate commerce and we have no doubt that Congress had constitutional authority to safeguard the right

[8] See, for example, Final Report of the Industrial Commission (1902), vol. 19, p. 844; Report of the Anthracite Coal Strike Commission (1902), Sen. Doc. No. 6, 58th Cong., spec. sess.; Final Report of Commission on Industrial Relations (1916), Sen. Doc. No. 415, 64th Cong., 1st sess., vol. I; National War Labor Board, Principles and Rules of Procedure (1919), p. 4; Bureau of Labor Statistics, Bulletin No. 287 (1921), pp. 52-64; History of the Shipbuilding Labor Adjustment Board, U. S. Bureau of Labor Statistics, Bulletin No. 283.

[9] See Investigating Strike in Steel Industries, Sen. Rep. No. 289, 66th Cong., 1st sess.

of respondent's employees to self-organization and freedom in the choice of representatives for collective bargaining.

Fifth. The means which the Act employs.—Questions under the due process clause and other constitutional restrictions.—Respondent asserts its right to conduct its business in an orderly manner without being subjected to arbitrary restraints. What we have said points to the fallacy in the argument. Employees have their correlative right to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. *Texas & N. O. R. Co.* v. *Railway Clerks, supra; Virginian Railway Co.* v. *System Federation, No. 40.* Restraint for the purpose of preventing an unjust interference with that right cannot be considered arbitrary or capricious. The provision of Section 9 (a)[10] that representatives, for the purpose of collective bargaining, of the majority of the employees in an appropriate unit shall be the exclusive representatives of all the employees in that unit, imposes upon the respondent only the duty of conferring and negotiating with the authorized representatives of its employees for the purpose of settling a labor dispute. This provision has its analogue in Section 2, Ninth, of the Railway Labor Act which was under consideration in *Virginian Railway Co.* v. *System Federation, No. 40, supra.* The decree which we affirmed in that case required the Railway Company to treat with the representative chosen by the employees and also to refrain from entering into collective labor agreements with anyone other than their true representative as ascertained in accordance with the provisions of the Act. We said that the obligation to treat with the true representative was exclusive and hence imposed the negative duty to treat with no other. We also pointed out that, as conceded by the Government,[11] the injunction against the Company's entering into any contract concerning rules, rates of pay and working conditions except with a

[10] The provision is as follows: "See 9 (a). Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer".

[11] See Virginian Railway Co. v. System Federation, No. 40, No. 324, decided March 29, 1937, p. 9, note 6.

chosen representative was "designed only to prevent collective bargaining with anyone purporting to represent employees" other than the representative they had selected. It was taken "to prohibit the negotiation of labor contracts generally applicable to employees" in the described unit with any other representative than the one so chosen, "but not as precluding such individual contracts" as the Company might "elect to make directly with individual employees". We think this construction also applies to Section 9 (a) of the National Labor Relations Act.

The Act does not compel agreements between employers and employees. It does not compel any agreement whatever. It does not prevent the employer "from refusing to make a collective contract and hiring individuals on whatever terms" the employer "may by unilateral action determine".[12] The Act expressly provides in Section 9 (a) that any individual employee or a group of employees shall have the right at any time to present grievances to their employer. The theory of the Act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustments and agreements which the Act in itself does not attempt to compel. As we said in *Texas & N. O. R. Co.* v. *Railway Clerks, supra,* and repeated in *Virginian Railway Co.* v. *System Federation, No. 40,* the cases of *Adair* v. *United States,* 208 U. S. 161, and *Coppage* v. *Kansas,* 236 U. S. 1, are inapplicable to legislation of this character. The Act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and, on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion. The true purpose is the subject of investigation with full opportunity to show the facts. It would seem that when employers freely recognize the right of their employees to their own organizations and their unrestricted right of representation there will be much less occasion for controversy in respect to the free and appropriate exercise of the right of selection and discharge.

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[12] See Note 11.

The Act has been criticised as one-sided in its application; that it subjects the employer to supervision and restraint and leaves untouched the abuses for which employees may be responsible. That it fails to provide a more comprehensive plan,—with better assurances of fairness to both sides and with increased chances of success in bringing about, if not compelling, equitable solutions of industrial disputes affecting interstate commerce. But we are dealing with the power of Congress, not with a particular policy or with the extent to which policy should go. We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid "cautious advance, step by step," in dealing with the evils which are exhibited in activities within the range of legislative power. *Carroll* v. *Greenwich Insurance Co.*, 199 U. S. 401, 411; *Keokee Coke Co.* v. *Taylor*, 234 U. S. 224, 227; *Miller* v. *Wilson*, 236 U. S. 373, 384; *Sproles* v. *Binford*, 286 U. S. 374, 396. The question in such cases is whether the legislature, in what it does prescribe, has gone beyond constitutional limits.

The procedural provisions of the Act are assailed. But these provisions, as we construe them, do not offend against the constitutional requirements governing the creation and action of administrative bodies. See *Interstate Commerce Commission* v. *Louisville & Nashville R. Co.*, 227 U. S. 88, 91. The Act establishes standards to which the Board must conform. There must be complaint, notice and hearing. The Board must receive evidence and make findings. The findings as to the facts are to be conclusive, but only if supported by evidence. The order of the Board is subject to review by the designated court, and only when sustained by the court may the order be enforced. Upon that review all questions of the jurisdiction of the Board and the regularity of its proceedings, all questions of constitutional right or statutory authority are open to examination by the court. We construe the procedural provisions as affording adequate opportunity to secure judicial protection against arbitrary action in accordance with the well-settled rules applicable to administrative agencies set up by Congress to aid in the enforcement of valid legislation. It is not necessary to repeat these rules which have frequently been declared. None of them appears to have been transgressed in the instant case. Respondent was notified and heard. It had opportunity

to meet the charge of unfair labor practices upon the merits, and by withdrawing from the hearing it declined to avail itself of that opportunity. The facts found by the Board support its order and the evidence supports the findings. Respondent has no just ground for complaint on this score.

The order of the Board required the reinstatement of the employees who were found to have been discharged because of their "union activity" and for the purpose of "discouraging membership in the union". That requirement was authorized by the Act. Sec. 10 (c). In *Texas & N. O. R. Co.* v. *Railway Clerks, supra,* a similar order for restoration to service was made by the court in contempt proceedings for the violation of an injunction issued by the court to restrain an interference with the right of employees as guaranteed by the Railway Labor Act of 1926. The requirement of restoration to service, of employees discharged in violation of the provisions of that Act, was thus a sanction imposed in the enforcement of a judicial decree. We do not doubt that Congress could impose a like sanction for the enforcement of its valid regulation. The fact that in the one case it was a judicial sanction, and in the other a legislative one, is not an essential difference in determining its propriety.

Respondent complains that the Board not only ordered reinstatement but directed the payment of wages for the time lost by the discharge, less amounts earned by the employee during that period. This part of the order was also authorized by the Act. Sec. 10 (c). It is argued that the requirement is equivalent to a money judgment and hence contravenes the Seventh Amendment with respect to trial by jury. The Seventh Amendment provides that "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved". The Amendment thus preserves the right which existed under the common law when the Amendment was adopted. *Shields* v. *Thomas,* 18 How. 253, 262; *In re Wood,* 210 U. S. 246, 258; *Dimick* v. *Schiedt,* 293 U. S. 474, 476; *Baltimore & Carolina Line* v. *Redman,* 295 U. S. 654, 657. Thus it has no application to cases where recovery of money damages is an incident to equitable relief even though damages might have been recovered in an action at law. *Clark* v. *Wooster,* 119 U. S. 322, 325; *Pease* v. *Rathbun-Jones Engineering Co.,* 243 U. S. 273, 279. It does not apply where the pro-

ceeding is not in the nature of a suit at common law. *Guthrie National Bank* v. *Guthrie*, 173 U. S. 528, 537.

The instant case is not a suit at common law or in the nature of such a suit. The proceeding is one unknown to the common law. It is a statutory proceeding. Reinstatement of the employee and payment for time lost are requirements imposed for violation of the statute and are remedies appropriate to its enforcement. The contention under the Seventh Amendment is without merit.

Our conclusion is that the order of the Board was within its competency and that the Act is valid as here applied. The judgment of the Circuit Court of Appeals is reversed and the cause is remanded for further proceedings in conformity with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES.

Nos. 419, 420-21, 422-23.—October Term, 1936.

National Labor Relations Board, Petitioner, 419 *vs.* Jones & Laughlin Steel Corporation.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.
National Labor Relations Board, Petitioner, 420 *vs.* Fruehauf Trailer Company.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.
National Labor Relations Board, Petitioner, 421 *vs.* Fruehauf Trailer Company.	
National Labor Relations Board, Petitioner, 422 *vs.* Friedman-Harry Marks Clothing Company, Inc.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.
National Labor Relations Board, Petitioner, 423 *vs.* Friedman-Harry Marks Clothing Company, Inc.	

[April 12, 1937.]

Mr. Justice McReynolds delivered the following dissenting opinion.

Mr. Justice Van Devanter, Mr. Justice Sutherland, Mr. Justice Butler and I are unable to agree with the decisions just announced.

We conclude that these causes were rightly decided by the three Circuit Courts of Appeals and that their judgments should be affirmed. The opinions there given without dissent are terse, well-considered and sound. They disclose the meaning ascribed by experienced judges to what this Court has often declared and are set out below in full.

Considering the far-reaching import of these decisions, the departure from what we understand has been consistently ruled here,

and the extraordinary power confirmed to a Board of three,[1] the obligation to present our views becomes plain.

The Court as we think departs from well-established principles followed in *Schechter* v. *The United States*, 295 U. S. 495 (May, 1935) and *Carter* v. *Carter Coal Co.*, 298 U. S. 238 (May, 1936). Upon the authority of those decisions, the Circuit Courts of Appeals of the Fifth, Sixth and Second Circuits in the causes now before us have held the power of Congress under the commerce clause does not extend to relations between employers and their employees engaged in manufacture, and therefore the Act conferred upon the National Labor Relations Board no authority in respect of matters covered by the questioned orders. In *Foster Bros. Mfg. Co.* v. *National Labor Relations Board*, 85 F. (2d) 984, the Circuit Court of Appeals, Fourth Circuit, held the Act inapplicable to manufacture and expressed the view that if so extended it would be invalid. Six district courts, on the authority of *Schechter's* and *Carter's* cases, have held that the Board has no authority to regulate relations between employers and employees engaged in local production.[a] No decision or judicial opinion to the contrary has been cited, and we find none. Every consideration brought forward to uphold the Act before us was applicable to support the Acts held unconstitutional in causes decided within two years. And the lower courts rightly deemed them controlling.

By its terms the Labor Act extends to employers—large and small—unless excluded by definition,[2] and declares that if one of these interferes with, restrains, or coerces any employee regarding his labor affiliations, etc., this shall be regarded as unfair labor practice. And a "labor organization" means any organization of any kind or any agency or employee representation committee or plan which exists for the purpose in whole or in part of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.[b]

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[1] National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; U. S. C., Sup. I, Tit. 29, Secs. 151 *et seq.*).

[a] Stout *v.* Pratt, 12 F. Supp. 864. Bendix Products Corporation *v.* Beman, 14 F. Supp. 58. Eagle-Picher Lead Co. *v.* Madden, 15 F. Supp. 407. Bethlehem Shipbuilding Corporation *v.* Meyers, 15 F. Supp. 915. El Paso Electric Co. *v.* Elliott, 15 F. Supp. 81. Oberman & Co. *v.* Pratt, 16 F. Supp. 887.

[b] Sec. 2. (5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The three respondents happen to be manufacturing concerns—one large, two relatively small. The Act is now applied to each upon grounds common to all. Obviously what is determined as to these concerns may gravely affect a multitude of employers who engage in a great variety of private enterprises—mercantile, manufacturing, publishing, stock-raising, mining, etc. It puts into the hands of a Board power of control over purely local industry beyond anything heretofore deemed permissible.

II.

[No. 419] Circuit Court of Appeals (Fifth Circuit)
Opinion June 15, 1936, 83 F. (2d) 998
Before FOSTER, SIBLEY, and HUTCHESON, Circuit Judges

By the COURT: The National Labor Relations Board has petitioned us to enforce an order made by it, which requires Jones & Laughlin Steel Corporation, organized under the laws of Pennsylvania, to reinstate certain discharged employees in its steel plant in Aliquippa, Pa., and to do other things in that connection.

The petition must be denied because, under the facts found by the Board and shown by the evidence, the Board has no jurisdiction

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SEC. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

[2] SEC. (2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

SEC. 2. (3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

SEC. 7. Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

over a labor dispute between employer and employees touching the discharge of laborers in a steel plant who were engaged only in manufacture. The Constitution does not vest in the Federal Government the power to regulate the relation as such of employer and employee in production or manufacture.

"One who produces or manufactures a commodity, subsequently sold and shipped by him in interstate commerce, whether such sale and shipment were originally intended or not, has engaged in two distinct and separate activities. So far as he produces or manufactures a commodity, his business is purely local. So far as he sells and ships, or contracts to sell and ship, the commodity to customers in another state, he engages in interstate commerce. In respect of the former, he is subject only to regulation by the state; in respect of the latter, to regulation only by the federal government. Utah Power & L. Co. vs. Pfost, 286 U. S. 165, 182. Production is not commerce but a step in preparation for commerce. Chassaniol vs. Greenwood, 291 U. S. 584-587.

"We have seen that the word 'commerce' is the equivalent of the phrase 'intercourse for the purposes of trade.' Plainly the incidents leading up to and culminating in the mining of coal do not constitute such intercourse. The employment of men, the fixing of their wages, hours of labor and working conditions, the bargaining in respect of these things—whether carried on separately or collectively—each and all constitute intercourse for the purposes of production, not of trade. The latter is a thing apart from the relation of employer and employee, which in all producing occupations is purely local in character. Extraction of coal from the mine is the aim and the completed result of local activities. Commerce in the coal mined is not brought into being by force of these activities but by negotiations, agreements, and circumstances entirely apart from production. Mining brings the subject matter of commerce into existence. Commerce disposes of it." Carter vs. Coal Company, 298 U. S. 238, May 18, 1936.

That the employer has a very large business, the interruption of which by a strike of employees which might happen, and that in consequence of such strike production might be stopped and interstate commerce in the products affected, does not make the regulation of the relation justified under the commerce power of Congress, because the possible effect on interstate commerce is too remote to warrant Federal invasion of the State's right to regulate the employer-employee relation. Nor is it important that the employer imports part of his raw materials in interstate commerce and sells and exports a large part of his product in interstate commerce, which imports and exports would possibly be stopped by a possible strike. The employers' entire business thus connected together does not, as respects Federal power, make a case different from that in which importation of materials, manufacture of them, and sale and

export of the product are conducted by three persons. The employer here by doing all three things does not alter the respective constitutional spheres of the Federal and State governments. The making and fabrication of steel by Jones & Laughlin Steel Corporation is production regulable by the State of Pennsylvania, notwithstanding the corporation also engages in interstate commerce regulable by Congress in bringing in its raw materials and again in selling and delivering its products. No specific present intent appears to impede or destroy interstate commerce by means of a strike in a manufacturing plant, or other like direct obstruction to or burden on interstate commerce. The order we are asked to enforce is not shown to be one authorized to be made under the authority of Congress. Carter vs. Carter Coal Co., supra.

The petition is denied.

III.

[Nos. 420-421] Circuit Court of Appeals (Sixth Circuit)
Opinion June 30, 1936, 85 F. (2d) 391
Before MOORMAN, HICKS, and SIMONS, Circuit Judges

PER CURIAM: The National Labor Relations Board has filed a petition in this court to enforce an order issued by it in proceedings which it instituted against the Fruehauf Trailer Company. The order directs the Trailer Company to cease and desist from discharging or threatening to discharge any of its employees because of their activities in connection with the United Automobile Workers Federal Labor Union No 19,375, to cease discouraging its employees from becoming members of that union, to offer to certain of its former employees immediate and full reinstatement in their former positions without prejudice to their seniority rights, to make such employees whole for any losses of pay that they have suffered by reason of their discharge by paying them what they would have earned as wages from the dates of their discharges, and to post notices throughout its Detroit plant, in conspicuous places, stating that it has ceased and desisted from discharging or threatening to discharge its employees for joining the United Automobile Workers Federal Labor Union No. 19,375. The Fruehauf Trailer Company has filed its petition seeking a review of the order and praying that the court set it aside. The record of the proceeding before the Labor Board has been filed and the two petitions have been heard together in this court.

The Fruehauf Trailer Company is a corporation organized and existing under the laws of the State of Michigan and is engaged in the manufacture, assembly, and sale of automobile trailers at its plant in Detroit, Michigan. The material and parts used in the manufacture and production of the trailers are shipped to the plant

After the trailers are manufactured, many of them are shipped to other states for sale and use. The order in question undertakes to regulate and control the Trailer Company's relations and dealings with its employees engaged in the production and manufacture of trailers at the company's plant in Detroit and does not directly affect any of the activities of the Trailer Company in the purchasing and transporting to its plant of materials and parts for the manufacture and production of trailers or in the shipping or selling of such trailers after they are manufactured. It was issued under the authority of the Act of Congress of July 5, 1935, known as the National Labor Relations Act. The authority for the Act is claimed under the commerce clause of the Constitution. Since the order is directed to the control and regulation of the relations between the Trailer Company and its employees in respect to their activities in the manufacture and production of trailers and does not directly affect any phase of any interstate commerce in which the Trailer Company may be engaged, and since, under the ruling of Carter v. Carter Coal Company, 298 U. S. 238, the Congress has no authority or power to regulate or control such relations between the Trailer Company and its employees, the National Labor Relations Board was without authority to issue the order [See National Labor Relations Board v. Jones & Laughlin Steel Corporation (5 C. C. A.), June 15, 1936].

The petition of the Board is accordingly dismissed and the order is set aside.

IV.

[Nos. 422-423] Circuit Court of Appeals (Second Circuit)
Opinion July 13, 1936, 85 F. (2d) 1

Before MANTON, SWAN, and A. N. HAND, Circuit Judges

PER CURIAM: The respondent, a Virginia corporation, is a manufacturer of men's clothing with its principal office and its factory in Richmond, Va. Practically all the raw materials used are brought from other states down into Virginia where respondent manufactures them into men's clothing. About 83% of the manufactured products are sold f. o. b. Richmond, to customers located in states other than Virginia.

Two sets of charges were filed with petitioner's local Regional Director by the Amalgamated Clothing Workers of America, a labor union of workers in the men's clothing industry, in which it was alleged that the respondent violated the National Labor Relations Act by discharging from its employ, and discriminating against, 29 out of 800 of its employees, because they had engaged in union activities. The Board filed complaints under § 10 (b) of the Act and after a hearing respondent was found to have violated the Act and was ordered to cease and desist from the unfair labor practices.

Petitioner's theory is that the respondent is engaged in interstate commerce because of the shipment of raw materials to it from other states and the shipment of its finished products to other states, and, in addition, that the flow of commerce doctrine, as exemplified in Swift & Co. v. United States (196 U. S. 375), brings this manufacturer within the federal power to regulate commerce. Respondent contends that the National Labor Relations Act as applied to it, is unconstitutional and therefore invalid and that the attempt to enforce provisions against it is illegal.

It is shown that the alleged unfair labor practices complained of occurred in the manufacture of clothing in Richmond, Va. None of the workers involved had to do with the transportation of the clothing after its manufacture. They were engaged in various operations in the Richmond factory.

The relations between the employer and its employees in this manufacturing industry were merely incidentals of production. In its manufacturing, respondent was in no way engaged in interstate commerce, nor did its labor practices so directly affect interstate commerce as to come within the federal commerce power. Carter v. Carter Coal Co., 298 U. S. 238; Schechter v. United States, 295 U. S. 495. No authority warrants the conclusion that the powers of the Federal Government permit the regulation of the dealings between employers or employees when engaged in the purely local business of manufacture.

Therefore the orders to cease and desist may not be enforced.

Petitions denied.

V.

In each cause the Labor Board formulated and then sustained a charge of unfair labor practices towards persons employed only in production. It ordered restoration of discharged employees to former positions with payment for losses sustained. These orders were declared invalid below upon the ground that respondents while carrying on production operations were not thereby engaging in interstate commerce; that labor practices in the course of such operations did not directly affect interstate commerce; consequently respondents' actions did not come within Congressional power.

Respondent in No. 419 is a large, integrated manufacturer of iron and steel products—the fourth largest in the United States. It has two production plants in Pennsylvania where raw materials brought from points outside the State are converted into finished products, which are thereafter distributed in interstate commerce throughout many states. The Corporation has assets amounting to

$180,000,000, gross income $47,000,000, and employs 22,000 people—10,000 in the Aliquippa plant where the complaining employees worked. So far as they relate to essential principles presently important, the activities of this Corporation, while large, do not differ materially from those of the other respondents and very many small producers and distributors. It has attained great size; occupies an important place in business; owns and operates mines of ore, coal, and lime-stone outside Pennsylvania, the output of which, with other raw material, moves to the production plants. At the plants this movement ends. Having come to rest this material remains in warehouses, storage yards, etc., often for months, until the process of manufacture begins. After this has been completed, the finished products go into interstate commerce. The discharged employees labored only in the manufacturing department. They took no part in the transportation to or away from the plant; nor did they participate in any activity which preceded or followed manufacture.

Our concern is with those activities which are common to the three enterprises. Such circumstances as are merely fortuitous —size, character of products, etc.—may be put on one side. The wide sweep of the statute will more readily appear if consideration be given to the Board's proceedings against the smallest and relatively least important—the Clothing Company. If the Act applies to the relations of that Company to employees in production, of course it applies to the larger respondents with like business elements although the affairs of the latter may present other characteristics. Though differing in some respects, all respondents procure raw materials outside the state where they manufacture, fabricate within and then ship beyond the state.

In Nos. 420-21 the respondent, Michigan corporation, manufactures commercial trailers for automobiles from raw materials brought from outside that State, and thereafter sells these in many states. It has a single manufacturing plant at Detroit and annual receipts around $3,000,000; 900 people are employed.

In Nos. 422-23 the respondent is a Virginia corporation engaged in manufacturing and distributing men's clothing. It has a single plant and chief office at Richmond, annual business amounting perhaps to $2,000,000, employs 800, brings in almost all raw material from other states and ships the output in interstate commerce. There are some 3,800 similar plants for manufacturing clothing in

the United States, which together employ 150,000 persons and annually put out products worth $800,000,000.

VI.

The Clothing Company is a typical small manufacturing concern which produces less than one-half of one per cent of the men's clothing produced in the United States and employs 800 of the 150,000 workmen engaged therein. If closed today, the ultimate effect on commerce in clothing obviously would be negligible. It stands alone, is not seeking to acquire a monopoly or to restrain trade. There is no evidence of a strike by its employees at any time or that one is now threatened, and nothing to indicate the probable result if one should occur.

Some account of the Labor Board's proceedings against this Company will indicate the ambit of the Act as presently construed.

September 28, 1935, the Amalgamated Clothing Workers of America, purporting to act under Section 10 (b) of the National Labor Relations Act,[3] filed with the Board a "Charge" stating that the Clothing Company had engaged in unfair labor practices within the meaning of the Act—Section 8 (1) (3)—in that it had, on stated days in August and September, 1935, unjustifiably discharged, demoted or discriminated against some twenty named members of that union and, in other ways, had restrained, interfered with and coerced employees in the exercise of their right of free choice of representatives for collective bargaining. And further "that said labor practices are unfair labor practices affecting commerce within the meaning of said Act."

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[3] Sec. 10. (b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceedings and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

This "Charge" contained no description of the Company's business, no word concerning any strike against it past, present or threatened. The number of persons employed or how many of these had joined the union is not disclosed.

Thereupon the Board issued a "Complaint" which recited the particulars of the "Charge", alleged incorporation of the Company in Virginia, and ownership of a plant at Richmond where it is continuously engaged in the "production, sale and distribution of men's clothing"; that material is brought from other states and manufactured into clothing, which is sold and shipped to many states, etc.,—"all of aforesaid constituting a continuous flow of commerce among the several states". Also that while operating the Richmond plant the Clothing Company discharged, demoted, laid off or discriminated against some twenty persons "employed in production at the said plant . . . for the reason that all of the said employees, and each of them, joined and assisted a labor organization known as the Amalgamated Clothing Workers of America, and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection", etc. Further that the Company circulated among its employees and undertook to coerce them to sign a writing expressing satisfaction with conditions; induced some members of the union to withdraw; did other similar things, etc.—all of which amounted to unfair labor practices affecting commerce within the meaning of Section 8 (1) (3) (4)[4] and Section 2 (6) (7)[5] of the

[4] SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

Labor Act. "The aforesaid unfair labor practices occur in commerce among the several states, and on the basis of experience in the aforesaid plant and others in the same and other industries, burden and obstruct such commerce and the free flow thereof and have led and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof."

The complaint says nothing concerning any strike against the Clothing Company past, present or threatened; there is no allegation concerning the number of persons employed, how many joined the union, or the value of the output.

The respondent filed a special appearance objecting to the Board's jurisdiction, which was overruled; also an answer admitting the discharge of certain employees, but otherwise it generally denied the allegations of the "Complaint".

Thereupon the Board demanded access to the Company's private records of accounts, disclosure of the amount of capital invested by its private owners, the names of all of its employees, its payrolls, the amounts and character of all purchases and from whom made, the amounts of sales and to whom made, including the number and kind of units, the number of employees in the plant during eight years, the names and addresses of the directors and officers of the Company, the names and addresses of its salesmen, the stock ownership of the Company, the affiliation, if any, with other companies, and the former occupations and businesses of its stockholders.

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(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 8 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment; *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

[5] SEC. 2 (6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

During hearings held at Richmond and Washington, unfettered by rules of evidence, it received a mass of testimony—largely irrelevant. Much related to the character of respondent's business, general methods used in the men's clothing industry, the numbers employed and the general effect of strikes therein. The circumstances attending the discharge or demotion of the specified employees were brought out.

Following this the Board found—

The men's clothing industry of the United States ranks sixteenth in the number of wage earners employed, with more than 3,000 firms and 150,000 workers engaged. The steps in the typical process of manufacture are described. Raw material is brought in from many states, and after fabrication the garments are sold and delivered through canvassers and retailers. "The men's clothing industry is thus an industry which is nearly entirely dependent in its operations upon purchases and sales in interstate commerce and upon interstate transportation."

The Amalgamated Clothing Workers of America is a labor organization composed of over 125,000 men and women employed in making clothing. Members are organized in local unions. Before recognition of this union by employers long and bitter strikes occurred, some of which are described. The union has striven consistently to improve the general economic and social conditions of members. Benefits that flow from recognizing and cooperating with it are realized by manufacturers.

Description is given of the Clothing Company's operations, the sources of its raw material (nearly all outside Virginia), and the method used to dispose of its output. Eighty-two per cent is sold to customers beyond Virginia. It is among the fifty largest firms in the industry, and among the ten of that group paying the lowest average wage.

In the summer of 1935 the employees at the Richmond plant formed a local of the Amalgamated Clothing Workers and solicited memberships. The management at once indicated opposition and declared it would not permit employees to join. Hostile acts and the circumstances of the discharge or demotion of complaining employees are described. It is said all were discharged or demoted because of union membership. And further that "Interference by employers in the men's clothing industry with the activities of employees in joining and assisting labor organizations and their refusal

to accept the procedure of collective bargaining has led and tends to lead to strikes and other labor disputes that burden and obstruct commerce and the free flow thereof. In those cases where the employees have been permitted to organize freely and the employers have been willing to bargain collectively, strikes and industrial unrest have gradually disappeared, as shown in Finding 19. But where the employer has taken the contrary position, strikes have ensued that have resulted in substantial or total cessation of production in the factories involved and obstruction to and burden upon the flow of raw materials and finished garments in interstate commerce."

The number of employees who joined the union does not appear; the general attitude of employees towards the union or the Company is not disclosed; the terms of employment are not stated—whether at will, by the day or by the month. What the local Chapter was especially seeking at the time we do not know.

It does not appear that, either prior or subsequent to the "Complaint", there has been any strike, disorder or industrial strife at respondent's factory, or any interference with or stoppage of production or shipment of its merchandise. Nor that alleged unfair labor practices at its plant had materially affected manufacture, sale or distribution; or materially affected, burdened or obstructed the flow of products; or affected, burdened or obstructed the flow of interstate commerce, or tended to do so.

The Board concluded that the Clothing Company had discriminated in respect to tenure and employment and thereby had discouraged membership in the union; that it had interfered with, restrained and coerced its employees in violation of rights guaranteed by Section 7 of the National Labor Relations Act; that these acts occurred in the course and conduct of commerce among the states, immediately affect employees engaged in the course and conduct of interstate commerce, and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof.

An order followed, March 28, 1936, which commanded immediate reinstatement of eight discharged employees and payment of their losses; also that the Company should cease and desist from discharging or discriminating against employees because of connections with the union, should post notices, etc. On the same day the Board filed a petition asking enforcement of the order in the United States Circuit Court of Appeals (Second Circuit) at New York, which was denied July 13, 1936.

VII.

The precise question for us to determine is whether in the circumstances disclosed Congress has power to authorize what the Labor Board commanded the respondent to do. Stated otherwise, in the circumstances here existing could Congress by statute direct what the Board has ordered? General disquisitions concerning the enactment are of minor, if any, importance. Circumstances not treated as essential to the exercise of power by the Board may, of course, be disregarded. The record in Nos. 422-23—a typical case—plainly presents these essentials and we may properly base further discussion upon the circumstances there disclosed.

A relatively small concern caused raw material to be shipped to its plant at Richmond, Virginia, converted this into clothing, and thereafter shipped the product to points outside the State. A labor union sought members among the employees at the plant and obtained some. The Company's management opposed this effort, and in order to discourage it discharged eight who had become members. The business of the Company is so small that to close its factory would have no direct or material effect upon the volume of interstate commerce in clothing. The number of operatives who joined the union is not disclosed; the wishes of other employees is not shown; probability of a strike is not found.

The argument in support of the Board affirms: "Thus the validity of any specific application of the preventive measures of this Act depends upon whether industrial strife resulting from the practices in the particular enterprise under consideration would be of the character which Federal power could control if it occurred. If strife in that enterprise could be controlled, certainly it could be prevented."

Manifestly that view of Congressional power would extend it into almost every field of human industry. With striking lucidity, fifty years ago, *Kidd* v. *Pearson*, 128 U. S. 1, 21, declared: "If it be held that the term [commerce with foreign nations and among the several states] includes the regulation of all such manufactures as are intended to be the subject of commercial transac-

tions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry." This doctrine found full approval in *United States* v. *E. C. Knight Co.*, 156 U. S. 1, 12, 13; *Schechter Poultry Corp., et al.* v. *United States, supra,* and *Carter* v. *Carter Coal Co., et al., supra,* where the authorities are collected and principles applicable here are discussed.

In *Knight's* case Chief Justice Fuller, speaking for the Court, said: "Doubtless the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense; and although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture, and is not a part of it . . . It is vital that the independence of the commercial power and of the police power, and the delimitation between them, however sometimes perplexing, should always be recognized and observed, for while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the States as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had better be borne, than the risk be run, in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality."

In *Schechter's* case we said: "In determining how far the federal government may go in controlling intrastate transactions upon the ground that they 'affect' interstate commerce, there is a necessary and well-established distinction between direct and indirect effects. The precise line can be drawn only as individual cases arise, but the distinction is clear in principle . . . But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of state power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practi-

cally all the activities of the people and the authority of the State over its domestic concerns would exist only by sufferance of the federal government. Indeed, on such a theory, even the development of the State's commercial facilities would be subject to federal control."

Carter's case declared—"Whether the effect of a given activity or condition is direct or indirect is not always easy to determine. The word 'direct' implies that the activity or condition invoked or blamed shall operate proximately—not mediately, remotely, or collaterally—to produce the effect. It connotes the absence of an efficient intervening agency or condition. And the extent of the effect bears no logical relation to its character. The distinction between a direct and an indirect effect turns, not upon the magnitude of either the cause or the effect, but entirely upon the manner in which the effect has been brought about. If the production by one man of a single ton of coal intended for interstate sale and shipment, and actually so sold and shipped, affects interstate commerce indirectly, the effect does not become direct by multiplying the tonnage, or increasing the number of men employed, or adding to the expense or complexities of the business, or by all combined."

Any effect on interstate commerce by the discharge of employees shown here, would be indirect and remote in the highest degree, as consideration of the facts will show. In No. 419 ten men out of ten thousand were discharged; in the other cases only a few. The immediate effect in the factory may be to create discontent among all those employed and a strike may follow, which, in turn, may result in reducing production, which ultimately may reduce the volume of goods moving in interstate commerce. By this chain of indirect and progressively remote events we finally reach the evil with which it is said the legislation under consideration undertakes to deal. A more remote and indirect interference with interstate commerce or a more definite invasion of the powers reserved to the states is difficult, if not impossible, to imagine.

The Constitution still recognizes the existence of States with indestructible powers; the Tenth Amendment was supposed to put them beyond controversy.

We are told that Congress may protect the "stream of commerce" and that one who buys raw material without the state, manufactures it therein, and ships the output to another state is in that stream. Therefore it is said he may be prevented from doing anything which may interfere with its flow.

This, too, goes beyond the constitutional limitations heretofore enforced. If a man raises cattle and regularly delivers them to a carrier for interstate shipment, may Congress prescribe the conditions under which he may employ or discharge helpers on the ranch? The products of a mine pass daily into interstate commerce; many things are brought to it from other states. Are the owners and the miners within the power of Congress in respect of the latter's tenure and discharge. May a mill owner be prohibited from closing his factory or discontinuing his business because so to do would stop the flow of products to and from his plant in interstate commerce? May employees in a factory be restrained from quitting work in a body because this will close the factory and thereby stop the flow of commerce? May arson of a factory be made a Federal offense whenever this would interefere with such flow? If the business cannot continue with the existing wage scale, may Congress command a reduction? If the ruling of the Court just announced is adhered to these questions suggest some of the problems certain to arise.

And if this theory of a continuous "stream of commerce" as now defined is correct, will it become the duty of the Federal Government hereafter to suppress every strike which by possibility may cause a blockade in that stream? *In re Debs*, 158 U. S. 564. Moreover, since Congress has intervened, are labor relations between most manufacturers and their employees removed from all control by the State? *Oregon-Washington R. Co.* v. *Washington*, 270 U. S. 87 (1926).

To this argument *Arkadelphia Milling Co.* v. *St. Louis Southwestern Railway Co., et al.*, 249 U. S. 134, 150 affords an adequate reply. No such continuous stream is shown by these records as that which counsel assume.

There is no ground on which reasonably to hold that refusal by a manufacturer, whose raw materials come from states other than that of his factory and whose products are regularly carried to

other states, to bargain collectively with employees in his manufacturing plant, directly affects interstate commerce. In such business, there is not one but two distinct movements or streams in interstate transportation. The first brings in raw material and there ends. Then follows manufacture, a separate and local activity. Upon completion of this, and not before, the second distinct movement or stream in interstate commerce begins and the products go to other states. Such is the common course for small as well as large industries. It is unreasonable and unprecedented to say the commerce clause confers upon Congress power to govern relations between employers and employees in these local activities. *Stout* v. *Pratt*, 12 F. Supp. 864. In *Schechter's* case we condemned as unauthorized by the commerce clause assertion of federal power in respect of commodities which had come to rest after interstate transportation. And, in *Carter's* case, we held Congress lacked power to regulate labor relations in respect of commodities before interstate commerce has begun.

It is gravely stated that experience teaches that if an employer discourages membership in "any organization of any kind" "in which employees participate, and which exists for the purpose in whole or in part of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work," discontent may follow and this in turn may lead to a strike, and as the outcome of the strike there may be a block in the stream of interstate commerce. Therefore Congress may inhibit the discharge! Whatever effect any cause of discontent may ultimately have upon commerce is far too indirect to justify Congressional regulation. Almost anything — marriage, birth, death — may in some fashion affect commerce

VIII.

That Congress has power by appropriate means, not prohibited by the Constitution, to prevent direct and material interference with the conduct of interstate commerce is settled doctrine. But the interference struck at must be direct and material, not some mere possibility contingent on wholly uncertain events; and there must be no impairment of rights guaranteed. A state by taxation on property may indirectly but seriously affect the cost of trans-

portation; it may not lay a direct tax upon the receipts from interstate transportation. The first is an indirect effect, the other direct.

This power to protect interstate commerce was invoked in *Standard Oil Co.* v. *United States*, 221 U. S. 1, and *United States* v. *American Tobacco Co.*, 221 U. S. 106. In each of those cases a combination sought to monopolize and restrain interstate commerce through purchase and consequent control of many large competing concerns engaged both in manufacture and interstate commerce. The combination was sufficiently powerful and action by it so persistent that success became a dangerous probability. Here there is no such situation, and the cases are inapplicable in the circumstances. There is no conspiracy to interfere with commerce unless it can be said to exist among the employees who became members of the union. There is a single plant operated by its own management whose only offense, as alleged, was the discharge of a few employees in the production department because they belonged to a union, coming within the broad definition of "labor organization" prescribed by Section 2 (5) of the Act. That definition includes any organization in which employees participate and which exists for the purpose in whole or in part of dealing with employers concerning grievances, wages, &c.

Section 13 of the Labor Act provides—"Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike". And yet it is ruled that to discharge an employee in a factory because he is a member of a labor organization (any kind) may create discontent which may lead to a strike and this may cause a block in the "stream of commerce"; consequently the discharge may be inhibited. Thus the Act exempts from its ambit the very evil which counsel insist may result from discontent caused by a discharge of an association member, but permits coercion of a non-member to join one.

The things inhibited by the Labor Act relate to the management of a manufacturing plant—something distinct from commerce and subject to the authority of the state. And this may not be abridged because of some vague possibility of distant interference with commerce.

IX.

Texas & New Orleans Railroad Co., et al. v. *Brotherhood of Railway & Steamship Clerks, et al.*, 281 U. S. 548, is not controlling. There the Court, while considering an act definitely limited to common carriers engaged in interstate transportation over whose affairs Congress admittedly has wide power, declared: "The petitioners invoke the principle declared in *Adair* v. *United States*, 208 U. S. 161, and *Coppage* v. *Kansas*, 236 U. S. 1, but these decisions are inapplicable. The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them. The statute is not aimed at this right of the employers but at the interference with the right of employees to have representatives of their own choosing. As the carriers subject to the Act have no constitutional right to interfere with the freedom of the employees in making their selections, they cannot complain of the statute on constitutional grounds."

Adair's case, *supra*, presented the question—"May Congress make it a criminal offense against the United States—as by the tenth section of the act of 1898 it does—for an agent or officer of an interstate carrier, having full authority in the premises from the carrier, to discharge an employee from service simply because of his membership in a labor organization?" The answer was no. "While, as already suggested, the right of liberty and property guaranteed by the Constitution against deprivation without due process of law, is subject to such reasonable restraints as the common good or the general welfare may require, it is not within the functions of government—at least in the absence of contract between the parties—to compel any person in the course of his business and against his will to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee. It was the legal right of the defendant Adair—however unwise such a course might have

~~been~~ to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization. In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land." "The provision of the statute under which the defendant was convicted must be held to be repugnant to the Fifth Amendment and as not embraced by nor within the power of Congress to regulate interstate commerce, but under the guise of regulating interstate commerce and as applied to this case it arbitrarily sanctions an illegal invasion of the personal liberty as well as the right of property of the defendant Adair."

Coppage v. *Kansas*, following the *Adair* case held that a state statute, declaring it a misdemeanor to require an employee to agree not to become a member of a labor organization during the time of his employment, was repugnant to the due process clause of the Fourteenth Amendment.

The right to contract is fundamental and includes the privilege of selecting those with whom one is willing to assume contractual relations. This right is unduly abridged by the Act now upheld. A private owner is deprived of power to manage his own property by freely selecting those to whom his manufacturing operations are to be entrusted. We think this cannot lawfully be done in circumstances like those here disclosed.

It seems clear to us that Congress has transcended the powers granted.

to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so however unwise such course on his part might have been-